

7 OCTOBER 1946

I N D E X
of
WITNESSES
(none)

I N D E X
of
EXHIBITS

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<u>No.</u>	<u>No.</u>			
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Monday, 7 October, 1946

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, same as before.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

(English to Japanese, Japanese to English, French to English and Japanese to French interpretation was made by the Language Section, IMTTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 (Whereupon, a statement was made in
4 Japanese by the interpreter.)

5 THE PRESIDENT: I should like to know what
6 was just stated over the IBM.

7 JAPANESE MONITOR: Mr. President, this
8 translation into Japanese was your statement made on
9 Friday which we did not translate on Friday afternoon,
10 sir.

11 THE PRESIDENT: Major Moore.

12 MAJOR MOORE: If the Tribunal please, referring
13 again to document 1632-W, exhibit 627, page 1, line 14,
14 this line should be corrected to read: ". . . his
15 approval to matters as they stand."

16 We recommend this correction.

17 THE PRESIDENT: The correction is noted.

18 Mr. Oneto.

19 MR. ONETO: Mr. President, with the permission
20 of the Court, I will continue presenting my case this
21 morning; but instead of Mr. Tavenner's reading the docu-
22 ments in English I have asked Mr. Horwitz to do it,
23 since Mr. Tavenner cannot be with us this morning
24 because he is unavailable.

25 THE PRESIDENT: Mr. Horwitz.

1 MR. HORWITZ: Continuing on page 2 of
2 exhibit 651, document No. 1030:

3 "Protocol between France and the
4 Japanese Empire concerning the Joint
5 Defense of French Indo-China.

6 "Signed at Vichy on 29 July, (1941) the
7 16th year of SHOWA

8 "Put into effect on the same day of the
9 same year

10 "Promulgated (in the August 2nd issue of
11 Gazette) on the 1st August, (1941), the 16th year of
12 SHOWA

13 "The Imperial Japanese Government and the
14 French Government

15 "Taking into consideration the present inter-
16 national situation:

17 "Recognizing that in consequence, in case the
18 security of French Indo-China is menaced, Japan will
19 have the reason to consider that the general tranquil-
20 ity in East Asia and her own security are in danger:

21 "Renewing on this occasion the engagements
22 taken, on the one hand by Japan to respect the rights
23 and interests of France in East Asia and especially the
24 territorial integrity of French Indo-China and the
25 sovereign rights of France in all parts of the Indo-

1 Chinese Union, and on the other hand by France not
2 to conclude in respect to Indo-China any agreement
3 or understanding with a third power anticipating
4 political, economic and military cooperation of a
5 nature opposing Japan directly or indirectly:

6 "Have concluded the following arrangements:

7 " (1) The two governments promise to co-
8 operate militarily for the joint defense of French
9 Indo-China.

10 " (2) The measure to be taken for the
11 purpose of this cooperation shall be the object of
12 special arrangements.

13 " (3) The above arrangements shall remain
14 effective only as long as the circumstances which con-
15 stituted the motive for their adoption exist.

16 "In witness whereof, the undersigned, duly
17 authorized by their respective Governments, have
18 signed this Protocol which shall be enforced from this
19 day, and have affixed their seals.

20 "Drawn up in duplicate, in the Japanese and
21 French languages, at Vichy, 29 July, 1941, correspond-
22 ing to the 29th day of the Seventh month of the 16th
23 year of Showa.

24 "KATO Sotomatus
25 "F. Darlan "

1 "We, after consultation with the Privy
2 Councillors sanction and hereby promulgate the Proto-
3 col between Japan and France concerning the Joint
4 Defense of French Indo-China, which was signed on
5 July 29, 1941 at Vichy by our Envoy Extraordinary and
6 Ambassador Plenipotentiary and by the representative
7 of France.

8 "August 1, 1941

9 "His Majesty the Emperor

10 "Counter-signed by:

11 "Premier Fumimaro KONOYE,
12 "War Minister Hideki TOJO,
13 "Navy Minister Koshiro OIKAWA,
14 "Foreign Minister Teijiro TOYODA."

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1 MR. ONETO: I now offer in evidence prosecution
2 document No. 4025-E(8). This is a telegram dated at
3 Bangkok, 1 September 1941, signed Neumann. The name
4 of the person to whom it is addressed does not appear.
5 The document was found in the files of the German
6 Foreign Office.

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Prosecution's document
9 No. 4025-E(8) will receive exhibit No. 652.

10 (Whereupon, the document above
11 referred to was marked prosecution's exhibit
12 No. 652, and was received in evidence.)

13 THE PRESIDENT: Mr. Horwitz.

14 MR. HORWITZ: (Reading)

15 "Telegram (Secret Cipher Process)

16 "BANGKOK 1 September 1941 1200 hours

17 "Arrival: 1 September 1941 1830 hours

18 "No. 273 of 1 September 1941

19 "SAIGON, no number, no date.

20 "The Japanese invasion of Indo-China has
21 all the signs of an occupation calculated /to last/
22 for a long period of time. The total strength of
23 troops thus far landed in South Indo-China is
24 25,000. An additional 20,000 will follow in the
25 eoming weeks. Not only the seven towns and air-

1 fields named in the July note from the Japanese
2 Government to the Embassy in Tokyo are occupied,
3 but all strategic points, large towns and settle-
4 ments in Cochinchina, Cambodia and Southern Annam
5 including a part of the fortifications of Cape St.
6 Jacques, where landing maneuvers were pitiful,
7 as Admiral Berenger, victor of the naval battle
8 against the Siamese fleet in Siam Bay, told me.
9 The landing was protected by strong Japanese naval
10 forces stationed between Cape St. Jacques and Poulo
11 Condore (3 aircraft carriers, 2 battleships, 10
12 cruisers) which have since left for the North.
13 In and before Cam Ranh there are no Japanese war-
14 ships thus far and only a weak landing detachment,
15 as I was personally able to see with my own eyes.

16 "The deployment is obviously directed
17 against Siam. The president of the Chamber of
18 Commerce told me he had been informed by General
19 SUMITA, head of the Japanese mission to Indo-China,
20 that Japan was considering the despatch of an
21 additional 150,000 troops. This is believed prob-
22 able here since the troops landed thus far are
23 insufficient for further offensive operations. The
24 attack on Siam is at the earliest possible only after
25 the end of the rainy season, in November.

1 "The Japanese are entirely acting the
2 masters here. A great part of Saigon's public
3 buildings including the Chamber of Commerce,
4 hotels and private houses have been ruthlessly
5 requisitioned for military purposes, resulting
6 in a great scarcity of homes. Otherwise the be-
7 havior of the Japanese is correct, although the un-
8 military attitude, especially of the officers, is
9 conspicuous.

10 "The only incidents concern Anamite
11 coolies who are maltreated and run away after
12 employment by the Japanese for improving airfields.
13 The workers needed by the Japanese will in the
14 future be recruited in Formosa. Parallel to the
15 military occupation is the economic and other
16 seizures, especially of all valuable raw materials."

17 This telegram is signed by Neumann.

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1 MR. ONETO: I now offer in evidence prosecu-
2 tion document No. 4025-E(10). This is a telegram from
3 Saigon dated 12 October 1941 and signed Neumann, who
4 was the representative of German Foreign Affairs at
5 Saigon. The document was found in the files of the
6 German Foreign Office.

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Prosecution's document
9 No. 4025-E(10) will receive exhibit No. 653.

10 (Whereupon, the document above
11 referred to was marked prosecution's exhibit
12 No. 653, and was received in evidence.)

13 MR. HORWITZ: (Reading)

14 "SAIGON, 12 October 1941 1350 hours

15 "Arrival 12 October 1941 2145 hours

16 "No. 10 of 11 October 1941

17 "Secret documents which have fallen into the
18 hands of the French police throw light on activity of
19 the Pan-Asiatic League as a tool of Japanese expansionist
20 policy in Indo-China.

21 "According to this, the League's branch offices
22 in Hanoi, Haiphong and Saigon were ordered towards the
23 end of June:

24 "1. To train instructors, teachers and pro-
25 pagandists for agitating for the Annamite independence

1 movement.

2 "2. To train a squad of native agitators who
3 are to propagate anti-French uprisings at the proper
4 time.

5 "3. To form special units among the Japan-
6 ese occupation troops who are to foster a pro-Japan-
7 ese sentiment through blameless behavior.

8 "4. To place suitable observers at all im-
9 portant centers of production and communications by
10 making use of the provisions of the trade agreement
11 between Indo-China and Japan. Their task would be:

12 "a) To report on all French troop
13 movements.

14 "b) To locate the storage places and
15 the quantity of all raw materials
16 important for Japan, including
17 foodstuffs.

18 "Such information is termed necessary for the
19 preparation of uprisings. According to the intentions
20 of Imperial General Headquarters the most suitable time
21 for striking will be the end of this year or next
22 spring. For this purpose contingents of Annamites
23 trained in Japan will soon be incorporated into the
24 Japanese occupation army as liaison men and interpre-
25 ters.

1 "According to Japanese source there are nine
2 Annamite fighting units in Saigon and over twenty rather
3 large Annamite fighting units in Hanoi. The French
4 say that the leaders and a great part of the members
5 are previously convicted criminals.

6 "It is significant that as early as 1935
7 Prince CUONG DE presided over the Pan-asiatic Congress.
8 The Prince is a descendant of Emperor GIALONG and
9 has been recognized as the sole lawful successor to
10 the throne by Annamite legitimists; he had fled to
11 Japan at the beginning of this century.

12 "(signed) NEUMANN.
13 "Identical telegram to Tokyo."

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3 large Annamite fighting units in Hanoi. The French
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10 the throne by Annamite legitimists; he had fled to
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12 "(signed) NEUMANN.
13 "Identical telegram to Tokyo."

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1 MR. ONETO: Prosecution document No. 4065-A is
2 now offered in evidence. This document consists of
3 three telegrams. The first is dated Paris, October
4 1941, and is signed Hemmen. The second, signed Abetz,
5 is dated Paris, 6 October 1941, and the third is
6 signed by the German Ambassador in Tokyo and is dated
7 15 October 1941. These telegrams were found in the
files of the German Foreign Office.

I wish to correct an error. The document in question is numbered 4065-B instead of 4065-A.

THE PRESIDENT: Admitted on the usual terms.

12 CLERK OF THE COURT: Prosecution's document
13 No. 4065 will receive exhibit No. 654, for identifi-
14 cation only; and the excerpt therefrom, to-wit, prose-
15 cution's document No. 4065-B, will receive exhibit
16 No. 654-A.

21 MR. MORWITZ: Reading from the top of page 3:

"TELEGRAM

"("Secret Cipher Process)

24 "TOKYO, 15 October 1941 - 0600 hours

25 "Arrival, 15 October 1941 1520 hours

1 "No. 2095 of 14 October

2 "Re Telegraphic orders dated 8 October, No. 1775

3 - Pol II

4 "Observations here confirm the description
5 of conditions as reported to Berlin from Saigon by
6 Councillor of Legation, Neumann during the last few
7 days. As was to be expected, the occupation of Indo-
8 China did not proceed without friction.

9 "I heard from the Foreign Ministry that
10 there are numerous points in dispute concerning the
11 interpretation of the defense agreement. The contro-
12 versy concerns the treatment of the Chungking-
13 appointed Chinese consul, the handing over of certain
14 airplanes, the seizure of quarters and goods, anti-
15 French propaganda disseminated by the Japanese army
16 among the native population, and so on.

17 "The French ambassador has lodged a number
18 of protests, and has pressed hard the removal of mat-
19 ters of complaint. The Japanese government intends
20 to increase the occupation forces, at present being
21 25,000, according to a report from Saigon, to 40,000.
22 I was assured by the Foreign Ministry that the French-
23 Japanese agreement does not provide for a maximum
24 limit for Japanese occupation troops.

25 "The Japanese Government seems to intend

1 to wrest a number of concessions from the French
2 Colonial administration through local military auth-
3 orities. Only after the creation of a fait accompli
4 will former Foreign Minister YOSHIZAWA, apparently
5 slated for handling questions relating to Indo-China,
6 leave for Saigon. I understand that this will not
7 materialize before the beginning of November.

8 "I am under the impression that both parties
9 will not let it come to an open conflict. The Japan-
10 ese government is endeavoring to keep up the out-
11 ward appearance of a defense alliance and, further-
12 more, is afraid of diminishing the economic utiliz-
13 ation of the country in case of an open clash,
14 through passive resistance of the colonial adminis-
15 tration and the native population. The Deputy For-
16 eign Minister told me that the rice quota, amounting
17 to 700,000 tons and urgently needed this year, was
18 secured on the strength of the agreement concluded
19 by MATSUOKA. It is, however, hoped that even great-
20 er quantities will be obtained owing to better pros-
21 pects for the harvest.

22 "The Foreign Ministry denied that there had
23 been a Japanese-Siamese argument in the Border Comm-
24 ission concerning the supervision of the demilitarized
25 zone. The Border Commission was only just starting

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1 out on its tasks. Identical telegram to Saigon.

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1 THE PRESIDENT: The IBM does not appear to be
2 working.

3 (Mr. Oneto resumed speaking in French.)

4 THE PRESIDENT: It is not working; it works
5 intermittently.

6 Begin again, Mr. Oneto.

7 MR. ONETO: I now offer in evidence prosecution
8 document No. 11-A(6), which is one of the items
9 included in prosecution document No. 11, which has been
10 marked exhibit No. 639 for identification. This is a
11 telegram dated 17 November 1941, to the Foreign Minister
12 of the Reich, and is signed Erdmannsdorff, who was a
13 member of the German Legation at Bangkok.

14 THE PRESIDENT: Admitted on the usual terms.

15 CLERK OF THE COURT: Prosecution's document
16 No. 11-A(6) will receive exhibit No. 655.

17 (Whereupon, the document above
18 referred to was marked prosecution's exhibit
19 No. 655, and was received in evidence.)

20 MR. HORWITZ: (Reading) "Berlin, November 17,
21 1941. Telegram. Code - Sender. To the Foreign
22 Minister of the Reich. Via the Office of the Ministry
23 of Foreign Affairs.

24 "In accordance with instructions I conferred
25 today with the Japanese Ambassador in regard to the

1 possibility of Japanese action in a Northern or a
2 Southern direction.

3 "General OSHIMA remarked that he had no infor-
4 mation whatever concerning the intentions and delibera-
5 tions of his Government and therefore could give only
6 his personal opinion."

7 Reaching from the last paragraph on page 2:

8 "Upon being questioned further, the Ambassador
9 remarked that the Anglo-Saxon powers might perhaps
10 just put up with a Japanese invasion of Thailand.
11 Such an invasion should if possible be undertaken
12 after prior agreement with the Thailand government. In
13 order to prepare for this the Japanese government in
14 its efforts at mediation in the conflict between Indo-
15 China and Thailand had decided in favor of the latter.
16 Of course there was very active English and American
17 propaganda in Bangkok, so that the attitude of the
18 Government there has become irresolute. In his opinion
19 the Japanese troops in South Indo-China should be still
20 further increased before an invasion of Thailand can
21 be made. The only purpose of such an invasion would
22 be to secure Thailand as a springboard for Singapore.
23 It was not very likely that the English in that case
24 would invade South Thailand, since they would then
25 expose themselves there as well as on the narrow

1 Malayan Peninsula to a Japanese flank attack with
2 landing maneuvers northwest of Singapore. This was
3 admittedly not easy since dense jungle would have to
4 be surmounted there."

5 Signed "Erdmannsdorff."

6 THE PRESIDENT: Major Furness.

7 MR. FURNESS: We would like the prosecution
8 to produce separate evidence as to the identity of the
9 signer of this telegram, who is said to be an official
10 in the Bangkok Embassy despite the fact that the tele-
11 gram is sent from Berlin.

12 THE PRESIDENT: I take it that signatures need
13 not be proved. But perhaps an explanation about the
14 place from which the telegram came is desirable.

15 MR. FURNESS: The question is not as to the
16 validity of the signature, but the identity of the
17 signer.

18 The same request is made as to the identity
19 of the signer of the preceding exhibit, Neumann.

20 THE PRESIDENT: That could affect admissibility
21 only, and the Charter deals with it. Your objections
22 must be as to admissibility and not to weight. How-
23 ever, we would like it cleared up; as I said before.
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1 MR. ONETO: Mr. President, as far as this
2 telegram is concerned, I wish to point out that it
3 is a telegram found in the Archives of the German
4 Foreign Office.

5 THE PRESIDENT: And you know no more about
6 it than that?

7 MR. ONETO: And I believe it was an error
8 in my statement when I said that this telegram came
9 from Bangkok. I believe I had it confused with
10 another telegram.

11 As far as document No. 4065-B is concerned,
12 it is possible for us to furnish immediately an
13 explanation regarding Mr. Neumann. The Court will
14 be able to read that explanation in document No. 4065-B
15 on page 3. It is a telegram signed by Ott from Tokyo
16 on the 15th of October, which reads as follows:

17 The observations here that we have been able
18 to gather here confirm the conditions as they have
19 been reported from Berlin on information from Saigon
20 from Mr. Neumann, Councillor of our post there -- of
21 our diplomatic post there.

22 The Tribunal's attention is directed to
23 prosecution document No. 1374, which is in evidence
24 as exhibit No. 600. This is a telegram from the German
25 Ambassador in Tokyo to the Reich Foreign Minister in

1 which it is set forth that upon an oral inquiry by
2 the Secretary of State Hull to the two Japanese
3 Ambassadors in Washington as to the aim of the
4 Japanese preparations in Indo-China, they had been
5 instructed to reply that the Japanese Government is
6 making preparations which had become necessary in
7 view of Chinese massing of troops in Yunnan and that
8 the preparations were being kept within the limits
9 of the contracted stipulations with France.

10 I present now for evidence prosecution
11 document No. 785-F, which is entitled, "Local
12 Military Agreement between the French Authorities and
13 the Japanese Army concerning the Joint Defense of
14 French Indo-China." This document is a part of
15 document No. 785, which is already in evidence for
16 identification under exhibit No. 647.

17 THE PRESIDENT: Admitted on the usual terms.

18 CLERK OF THE COURT: Prosecution's document
19 No. 785-F will receive exhibit No. 656.

20 (Whereupon, the above-mentioned
21 document was marked prosecution's exhibit
22 No. 656 and received in evidence.)

23 MR. HORWITZ (Reading):

24 "Local Military Agreement between the French
25 Authorities and the Japanese Army concerning the Joint

1 Defense of French Indo-China.

2 "General Principles

3 "(1) The French authorities shall collabor-
4 ate with all their resources with the Japanese Army
5 in the defense of French Indo-China in conformity with
6 agreements drawn up between France and Japan.

7 "(2) For the duration of the operations
8 carried out by the Japanese Army, the Indo-China
9 Authorities shall ensure public order in all Indo-
10 China territories in such a way as to secure the rear
11 of the Japanese Army. The Japanese troops shall be
12 able eventually to cooperate to this effect with the
13 French Indo-China authorities.

14 "(3) The Indo-China authorities shall grant
15 to the Japanese Army on Indo-China soil, all facilities
16 for its movement, subsistence and for the installation
17 of its military establishments.

18 "(4) The defense will, in principle, be
19 divided up thus:

20 "Japanese Army -

21 Southern Indo-China and eventually other
22 regions where it takes up positions

23 "Indo-China Army -

24 Northern Indo-China and other regions
25 where Indo-China troops are stationed.

1 In instances where both Japanese and
2 Indo-China troops might be stationed at
3 the same point a special agreement would
4 govern the details of the joint defense
5 at this point.

6 "(5) Separate agreements shall govern the
7 collaboration as far as it concerns

8 Anti-aircraft defense

9 Coastal defense

10 Sea and air navigation

11 Utilization of means of transport

12 Communications

13 Medical Service

14 Employment of material and labour

15 Anti-Espionage

16 Control of Information

17 "Ha noi 9 December 1941

18 "Squadron Vice-Admiral Jean Decoux

19 Governor-General of Indo-China

20 "Signed: Jean Decoux

21 "Captain HORIUCHI

22 Representing the Supreme Commander
23 of the Japanese Navy.

24 "Major General TYO

25 Representing the Supreme Commander of the Japa-

1 nese Army.

2 "Local Military Agreement between the French
3 Authorities and the Japanese Army regarding the joint
4 defense of French Indo-China

5 "Detailed Provisions

6 "(1) Air Defense.

7 "The air defense of Indo-China territories
8 is guaranteed by the French authorities who hold them-
9 selves, in this respect, in close liaison with the
10 corresponding authorities of the Japanese Army.

11 "The latter can require the French authori-
12 ties to put into action their means of defense, it
13 being understood that these will be employed primarily
14 in the defense of Indo-China civil and military installa-
15 tions.

16 "(2) The measures for air defense shall come
17 into force immediately.

18 "(3) Orders relative to air alerts (includ-
19 ing light control) shall be given in each locality by
20 the Japanese and Indo-China commanders on their own
21 respective initiative under the stipulation that each
22 shall warn the other without delay."

23 Skipping to II, "Coastal Defense," on page 3:

24 "(1) In cases where war or merchant ships
25 or planes belonging to countries at war with Japan ap-

1 proach the coasts of Indo-China, the French authori-
2 ties shall inform the Japanese Army of it immediately
3 and shall make all dispositions to repulse their
4 attacks.

5 "(2) The defense of the coasts of Indo-China
6 (including laying of mines on the high seas) shall be
7 secured in agreement with the Japanese authorities.

8 "(3) The moment at which this defense shall
9 come into force shall be fixed by understanding between
10 the French and Japanese authorities.

11 "(4) Liaison personnel may be stationed by
12 the Japanese Army with the command of the fortified
13 zones of CAMRANH BAY, DOSON and CAPE SAINT JACQUES and
14 other coast batteries.

15 "III. Ship Movements

16 "(1) The Japanese Navy shall be consulted
17 before any movement by French war or merchant ships.

18 "(2) Access to CAMRANH BAY is not allowed
19 without the permission of the Japanese Authorities.

20 "(3) In exceptional and urgent cases Japa-
21 nese warships and transports may be relieved of the
22 necessity of taking on an Indo-China pilot.

23 "IV. Movement of Planes.

24 "(1) French military aviation shall concen-
25 trate all its units in the North of Indo-China.

1 "(2) French military aviation shall effect
2 preliminary cooordination with the Japanese Army for
3 the anticipated modifications on its disposition.
4 These modifications may always be carried out without
5 preliminary consultation in case of necessity for air
6 defence, on condition that the Japanese Authorities
7 be informed of them without delay.

8 "(5) The Japanese Army may use, in case of
9 urgent need, all aerodrome and sea plane bases (includ-
10 ing places suitable for aviation) under the reserva-
11 tion that French aviation is free to make use of areas
12 which it is actually occupying and which are indispens-
13 able to it. In case of joint-occupation, local agree-
14 ments will be made guaranteeing the use of the landing
15 ground to French planes.

16 "(6) The air forces of the two armics sta-
17 tioned in North Indo-China shall mutually exchange
18 liaison officers if the need to do so makes itself
19 felt."

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1 "V. Traffic and Transport.

2 "(1) The French Indo-China authorities
3 shall satisfy, as far as possible, demands made
4 necessary by the operations of the Japanese Army
5 as regards the carrying out of transportation.
6 In regard to demands which envisage the use of
7 transport installations, there must be a specific
8 request in each particular case and such demands
9 will be completely met as far as the safety of
10 traffic and the carrying out of the transportation
11 permit.

12 "(2) Where military operations might in-
13 volve transportation over the Cambodia railway,
14 such transportation will be made, as a general rule,
15 by special through trains.

16 "(3) If, in the course of Japanese mili-
17 tary operations there is any risk that the trans-
18 portation required by the Japanese Army may be sub-
19 jected to delays and difficulties, the Japanese
20 Army, after giving sufficient notice, may, for the
21 time being, assume control of the use of railways.

22 "(4) All matters relating to the use of
23 the railways by the Japanese Army must be kept
24 strictly secret.

25 "(5) The total indemnity arising from the

relevant clause of the present agreement will be
finally settled after calculation.

"(7) When operations make it necessary,
the Japanese Army shall have the power, after giving
notice to the Indo-China authorities, to limit or
forbid, land, sea or river traffic within the bounds
of Japanese military installations and in certain
zones reserved for military operations.

"VI. Communications.

"(1) In case of pressing need of opera-
tions and after it has been demanded by the Japan-
ese Army, the Indo-China Authorities will have cer-
tain radio sendings and certain international commi-
unications by cable, stopped.

"(2) Messages relating to air defence
shall have priority over all others.

"(3) In case of necessity, the Japanese
and Indo-China armies shall have the power to attach
liaison agents to their radio stations.

"(4) The Indo-China Authorities shall give
to the Japanese Army the use of the installations
mentioned below. The Japanese Army in using these
installations must take into account the rightful
needs of the Indo-China Authorities, giving prior-
ity to Indo-China official telegrams.

1 "(a) Transmission by wire (actual lines)
2 "1. The Sector SAIGON-PHNOM-PENH-PURSAT
3 "Telegraph -- 2 lines
4 "Telephone --- 1 line
5 "2. Sector SAIGON - Cape Saint Jacuaes
6 "Telegraph - 1 line
7 "(b) Wireless and Radio Transmission
8 "1. Radio Sending Station of PHU THO
9 "(Companie Generale of Wireless
10 Transmission)
11 "One (12 KW) short wave sending set
12 "Two (3 KW) short wave sending sets
13 "One (3 KW) broadcasting set.
14 >An agreement shall be made on the spot
15 for the sharing and use of the sending stations
16 mentioned above, sending stations corresponding
17 to these senders, installations assigned to the
18 operation of these sets and microphone
19 rooms.
20 "It shall be the same for the following
21 stations.
22 "2. Station PHU THO (radio service)
23 1 (5 KW) wireless set
24 "3. Station PHU QUOC
25 1 (5 KW) wireless set"--

1 THE PRESIDENT: Why read all that?

2 MR. ONETO: Mr. President, I thought it
3 would be interesting to have this part read to the
4 Court in order to show the measure of precautions
5 taken by the Japanese in regard to the French forces.

6 THE PRESIDENT: It may be interesting, but
7 yet not helpful in the determination of any issue.
8 It seems to be too detailed to be of any assistance in
9 making any determination.

10 MR. ONETO: I ask the permission of the
11 Court to pass directly now to page 7, which describes
12 measures of counter-espionage and control. I will
13 begin in the middle of page 7:

14 MR. HORWITZ (Reading):

15 "IX. Counter-Espionage Measures.

16 "(1) The Indo-China Authorities shall
17 collaborate with the Japanese Army in its efforts
18 against espionage and activities liable to endanger
19 its security on Indo-China soil and will lend it
20 their support in the matter of counter espionage.

21 "They shall, without delay, exchange with
22 the Japanese Authorities all information which
23 they may be able to procur on this subject.

24 "(2) The competent Indo-China Authorities
25 shall take the necessary steps against foreigners

1 of every nationality, whose activities might endanger
2 the security of the Japanese forces.

3 "(3) The Indo-China Authorities must
4 recognize how very important secrecy is in the
5 operations undertaken for the joint-defence of
6 Indo-China. With a view to preserving this secrecy,
7 the Japanese Army will place a liaison agent in
8 each of the Indo-China control commissions of
9 telegrams, telephone conversations, and with the
10 censorship of reviews, newspapers and postal de-
11 livery.

12 "X. Control of Information.

13 "(1) The Indo-China Authorities shall
14 jointly decide upon measures which might be neces-
15 sitated by the exigencies of the joint-defence of
16 Indo-China, for control of Indo-China information
17 both outward and inward.

18 "(2) The Japanese Army will proceed to
19 the establishment and utilization of Japanese organ-
20 izations for radio broadcasting to foreign countries
21 after having informed the Government of Indo-China
22 of its intentions.

23 "(3) If events make it necessary, the
24 Japanese Army shall have the power eventually to
25 attach liaison agents to Indo-China broadcasting

1 organizations.

2 "Squadron Vice-Admiral J. DECOUX

3 Governor-General of Indo-China

4 Signed

5 "Ship-Captain HORIUCHI

6 Representing the Commander-in-Chief of
7 the Japanese Squadron.

8 Signed

9 "Major-General TYO

10 Representing the Commander-in-Chief of
11 the Japanese Army."

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1 MR. ONETO: Mr. President, the documents
2 which I wish to submit now concern particularly
3 economic aggression. To avoid any unnecessary loss
4 of time, I will, in as far as possible, make reference
5 only to documents already in exhibit and to read only
6 those parts which seem to me absolutely indispensable.

7 The attention of the Tribunal is directed
8 to prosecution document No. 1077, which is in
9 evidence as exhibit No. 637. The part of this ex-
10 hibit which is going to be read refers to an explana-
11 tion given by Councillor ISHIZUKA concerning economic
12 problems in Indo-China.

13 THE PRESIDENT: The Bench should be told
14 when you are going to read from exhibits already in
15 evidence so they may bring those exhibits into court.
16 I doubt whether we all have those exhibits in court.
17 However, proceed to read them.

18 MR. HORWITZ: Reading from page 4:

19 "According to the explanation of the
20 State Minister, on the occasion of the conclusion of
21 the Franco-Japanese Agreement of June, 1907 (Meiji 40),
22 the French and Japanese Governments declared, with
23 reference to French Indo-China, that until a commer-
24 cial treaty shall have been concluded in future,
25 Japan and French Indo-China would accord to each other

the most favored nation treatment in regard to the protection of the lives and property of each other's nationals. When the Franco-Japanese Commercial and Navigation Treaty was concluded in August, 1911 (Meiji 44), Japan wished to apply that treaty to French Indo-China also, but France refused it and merely declared that she reconfirmed the declaration of several years ago. Since then Japan took every opportunity to conclude a commercial treaty concerning French Indo-China, but failed because France opposed it, fearing extremely the penetration of Japanese and Japanese goods in that area. At last in August of Showa 2 (1927) we came to an agreement on the matter of residence and navigation, and a protocol providing for the system of residence and navigation between Japan and Indo-China was provisionally concluded. But as regards commercial matters, the negotiations proved very difficult and a compromise could not be easily reached. Meanwhile, France further strengthened the measures against the importation of Japanese goods, while Japan, on the other hand, was about to impose a retaliatory duty on coal, which was the main export of French Indo-China. Thereupon France finally reconsidered the matter and thus a commercial treaty provisionally stipulating

1 trade regulations between Japan and French Indo-
2 China was concluded in May of Showa 7 (1932). In
3 the previously mentioned protocol of Showa 2 (1927),
4 Japan and French Indo-China guaranteed to accord to
5 each other the treatment of the most favored nations
6 in respect to residential matters of both natural
7 persons and juridical persons, and the treatment of
8 domestic vessels or of the most favored nations in
9 respect to shipping. Nevertheless, the protocol
10 was not only a provisional agreement which could be
11 abolished at any time after January 1, 1928, (Showa 3),
12 by giving three months' advance notice, but also
13 lacked concrete provisions concerning entry into
14 the country, business, the ownership of immovables,
15 etc., with the result that it failed to achieve the
16 expected results.

17 "In the Commercial Treaty of 1932 (Showa 7),
18 Japan and French Indo-China granted to each other
19 the advantage of customs, but this, too, was a
20 provisional agreement, placing numerous items of our
21 important exports beyond the scope of its applica-
22 tion and making no provisions whatever in respect to
23 the prohibition and restriction of exports and im-
24 ports, import quotas, and the modification of the
25 rates. And so, by the raising of the custom tariff

1 by France, the advantages of the agreement were
2 greatly reduced, and by the reinforcement of this
3 quota system, the enforcement of exchange control,
4 etc., our trade with French Indo-China fell into a
5 slump again. But the change in the general situ-
6 ation due to the surrender of France to Germany
7 caused a change in the French attitude towards Japan,
8 giving Japan an opportunity to settle various pending
9 questions concerning French Indo-China, (as well as
10 political and military problems)."

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1 MR. ONETO: I call the Court's attention
2 to document No. 1202, in evidence under exhibit No.
3 550. This document relates to the Tri-partite Pact
4 negotiations and the attitude of Germany and Italy
5 towards the position of Japan in the construction of
6 a new order in Greater East Asia.

7 The attention of the Court is now invited
8 to document No. 4027-B, received in evidence under
9 exhibit No. 522. This document is a report from the
10 German Embassy in Tokyo, signed by Knoll. It refers
11 to the certainty of TOJO and Knoll that the future of
12 Japan is in the South.

13 The Tribunal's attention is called to
14 prosecution document No. 2137-D, which is in evidence
15 as exhibit No. 541. It relates to a meeting of
16 ministers in which Japan's expansion toward the
17 South was discussed.

18 THE PRESIDENT: The IBM is not working, or
19 working only intermittently.

20 We will recess now for fifteen minutes.

21 (Whereupon, at 1040, a recess was
22 taken until 1100, after which the proceedings
23 were resumed as follows:)

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1 MARSHAL OF THE COURT: The Tribunal is now
2 resumed.

3 THE PRESIDENT: Mr. Oneto.

4 MR. ONETO: I call the Court's attention to
5 document No. 837-A, already in evidence under exhibit
6 No. 628. This document relates to Japan's ambition
7 in Southeast Asia and their desire to conclude a com-
8 prehensive economic agreement. The Tribunal's atten-
9 tion is also called to prosecution document No. 1392,
which is in evidence as exhibit No. 528.

10 I now present prosecution document No. 772,
11 which is an official report from the Japanese Foreign
12 Ministry concerning the Japanese advance in Northern
13 Indo-China.

14 THE PRESIDENT: Admitted on the usual terms.

15 CLERK OF THE COURT: Prosecution's document
16 No. 772 will receive exhibit No. 657.

17 (Whereupon, the document above referred
18 to was marked as prosecution's exhibit No. 657 and
19 was received in evidence.)

20 MR. HORWITZ: (Reading) "Intervention by
21 Britain and America as regards the question of the
22 occupation of Northern Indo-China by the Imperial
23 Forces."

24 Reading from paragraph 2 on page 1:
25

"However, from the viewpoint of the necessity of our operations against China as well as the promotion of the disposal of the China Incident, it was considered imperative, on the occasion of sudden change in the international status of French Indo-China, not only to prohibit the transportation of the materials for aiding Chiang, but also to establish our military, political and economical supremacy over French Indo-China. So, we started preliminary negotiations in July at the place in question, and on 1 August we began formal negotiations in Tokyo with the French Ambassador there. The negotiations were extremely difficult as the French Government took a stiff attitude toward the above request of the Imperial Government, but by dint of our efforts at persuasion an agreement between the parties was at last reached on 30 August."

MR. ONETO: I now offer in evidence prosecution document No. 785-L. It is one of the items included in prosecution document No. 785, which has been marked exhibit No. 647 for identification. This document is an agreement signed on 6 May 1941 concerning exports and imports and terms of payment. Articles 20 to 31, inclusive, will be read.

1 THE PRESIDENT: Admitted on the usual terms.

2 CLERK OF THE COURT: Prosecution's document
3 No. 785-L will receive exhibit No. 658.

4 (Whereupon, the document above
5 referred to was marked prosecution's exhibit
6 No. 658 and was received in evidence.)

7 MR. HORWITZ: (Reading) "Franco-Japanese
8 Accord Concerning the Customs System, Trade and the
9 Forms of Payment Between Japan and Indo-China.

10 "Signed in Tokyo May 6, 1941.

11 "Ratifications exchanged in Tokyo July 5, 1941.

12 "In Force from the same day.

13 "Promulgated July 9, 1941. (Gazetted July 10,
14 1941).

15 "Having consulted the councillors of the Privy
16 Council, we ratify and hereby promulgate the Franco-
17 Japanese accord concerning the Customs System, Trade
18 and the Forms of Payment Between Japan and Indo-China,
19 signed and sealed in Tokyo by the Japanese delegate
20 together with the French delegate on May 6, 1941.

21 "The Imperial Seal, July 9, 1941.

22 "Prime Minister Prince KONOYE, Fumimaro.

23 "Foreign Minister MATSUOKA, Yosuke."

24 Turning to page 6, Article 20 -- page 8,

25 Article 20:

1 "Article 20

2 "With the exception of the products for which
3 exceptions have been specially agreed upon between
4 the two Governments, the amounts due to creditor
5 in Indo-China in payment for the imports into Japan
6 of the products of Indo-Chinese origin shall be
7 paid in Indo-Chinese piastres, and the amounts due
8 to creditors in Japan in payment for the imports into
9 Indo-China of the products of Japanese origin shall
10 be paid in Japanese yen.

11 "The provisions of the preceding article
12 shall be applied to the payment of freight, insur-
13 ance and various other charges connected with the
14 trade between Japan and Indo-China.

15 "The Japanese yen and Indo-Chinese pias-
16 tres prescribed in the two preceding articles shall
17 be acquirable respectively at the Yokohama Specie
18 Bank and the Banque de l'Indochine.

19 "Article 21

20 "The Banque de l'Indochine shall place at
21 the disposal of the Yokohama Specie Bank, as the
22 counterpart of their equivalent in yen, Indo-Chinese
23 piastres necessary for the payments prescribed in
24 the preceding article.

25 "The Yokohama Specie Bank shall place at

1 the disposal of the Banque de l'Indochine, as the
2 counterpart of their equivalent in Indo-Chinese
3 piastres, yen necessary for the payments prescribed
4 in the preceding article.

5 "The exchange rate between the yen and
6 piastres to be applied to the operations prescribed
7 in the present article shall be determined by mu-
8 tual agreement between the two Banks on the basis of
9 the gold value of the two monies, such as result
10 from the quotations by the said Banks for these
11 monies in the same foreign money convertible into gold.

12 "Article 22

13 "The yen acquired by the Banque de l'Indo-
14 chine in accordance with the provisions of the pre-
15 ceding article, shall be paid into two special yen
16 accounts, which will be opened in the books of the
17 Yokohama Specie Bank in the name of the Banque de
18 l'Indochine; these accounts shall be designated
19 in the present Accord under the names of Account A
20 and Account B.

21 "To the credit of Account A shall be
22 carried the yen acquired by the Banque de l'Indochine
23 as the counterpart of the piastres placed by it at
24 the disposal of the Yokohama Specie Bank for the
25 payments made by application of the present Accord,

1 with the exception of those prescribed in the fol-
2 owing paragraph.

3 "To the credit of Account B shall be car-
4 ried the total in 1941, 70% in 1942, and 55% in 1943
5 of the yen acquired by the Banque de l'Indochine as
6 a counterpart of the piastres placed by it at the
7 disposal of the Yokohama Specie Bank for the payment
8 of the white rice purchases made by Japan in Indo-
9 China. Account B shall bear interest at the rate to
10 be fixed by mutual agreement between the two Banks.

11 "The Piastres acquired by the Yokohama
12 Specie Bank in accordance with the provisions of the
13 preceding article shall be paid into a special
14 Piastre Account to be opened on the books of the
15 Banque de l'Indochine in the name of the Yokohama
16 Specie Bank; this account is designated in the
17 present Accord under the name of Account C.

18 "The Piastres and Yen respectively poss-
19 essed by the Yokohama Specie Bank by the Banque de
20 l'Indochine at the time of the enforcement of the
21 present Accord shall be carried to credit of Acc-
22 counts A and C.

23 "Article 23

24 "The funds in Accounts A and C shall be
25 appropriated exclusively to the following:

1 "1.) The payment of the products traded
2 between Japan and Indo-China.

3 "2.) The payment of freight, insurance
4 and other incidental charges related to this trade.

5 "The funds in account B shall not be used
6 directly for any payment. The sums which will have
7 been carried to the credit of this account in the
8 course of one month shall be transferred to Account
9 A at the end of the corresponding month of the fol-
10 owing year."

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1 MR. PRESIDENT: Will Mr. Oneto tell us why
2 all this should be read?

3 MR. ONETO: Mr. President, the goal of having
4 this text read was actually to show that the conditions
5 of this Franco-Japanese agreement, although they were
6 under the pretext of having equivalent advantages for
7 both French and Japanese participants, actually per-
8 mitted the Japanese Government to gain considerable
9 advantages without counterpart.

10 THE PRESIDENT: Can you not indicate the
11 clauses more particularly? It seems to me, I may be
12 quite wrong, that many of these clauses are quite
13 usual, just machinery clauses.

14 THE FRENCH MONITOR: Slight correction to
15 the English interpretation: "For the Japanese Govern-
16 ment to obtain piastres."

17 THE PRESIDENT: Must you read all those
18 ordinary machinery clauses to indicate where the
19 Japanese got an undue advantage?

20 MR. ONETO: Mr. President, I will now ask
21 Mr. Horwitz to pass directly to the reading of Article
22 30.

23 MR. HORWITZ: (Reading) "Article 30. If
24 during the duration of the present Accord, one of the
25 two Governments finds it impossible to perform any of

1 the provisions owing to unforeseen incidents, the two
2 Governments shall enter into a negotiation for the
3 solution of the difficulties thus arisen.

4 "Article 31. The present Accord shall be
5 ratified and the instruments of ratification"-- Sorry.

6 MR. ONETO: I now present prosecution document
7 No. 785-D, which is one of the items of document No. 785
8 already presented under exhibit No. 647 for identifica-
9 tion. It consists of an exchange of letters between
10 Laval and MITANI concerning terms of payment. It is
11 dated 20 January 1943.
12

13 THE PRESIDENT: Admitted on the usual terms.
14

15 CLERK OF THE COURT: Prosecution's document
16 No. 785-D will receive exhibit No. 659.
17

18 (Whereupon, the document above
19 referred to was marked prosecution's exhibit
20 No. 659 and was received in evidence.)
21

22 MR. HORWITZ: (Reading) "Outward European
23 Version -- Vichy, 20 January 1943.
24

25 I have the honour to submit to Your
Excellency the following proposals in view of the
necessity of setting up a new method of settlement
of payments concerning the territories of Great East
Asia.
26

27 "(1) The 'special yen' only shall be used
28

1 for settlements to be effected between Indo-China on
2 the one hand and Japan, the territories occupied by
3 Japan and all the regions in which the system of settle-
4 ments in yen is in force, on the other hand.

5 "(2) French Indo-China shall supply against
6 special yen the piastres which Japan needs for payments
7 to be made in Indo-China.

8 "(3) The payments indicated in the preceding
9 clause include commercial payments, the expenses of
10 maintaining the Japanese forces in Indo-China and all
11 other non-commercial payments."

12 Page 2: "I shall be glad to get Your
13 Excellency's agreement to the above-mentioned points
14 and beg you to accept, Monsieur le President, the re-
15 newed assurances of my highest esteem.
16

"Takanobu MITANI

17 "Ambassador Extraordinary and
18 Plenipotentiary of Japan.
19

20 "To His Excellency, Monsieur Pierre Laval, Head of the
21 French Government, Minister, Secretary of State for
22 Foreign Affairs."
23

24 MR. ONETO: The Tribunal's attention is
25 called to document No. 985-A, which is in evidence as
exhibit No. 620.

I call the Court's attention to document No.

1030, in evidence under exhibit No. 651. This docu-
1
ment is a protocol signed on 29 July 1941, between
2
Ambassador KATO and Vichy Minister Darlan concerning
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the common defense of Indo-China. I wish to refer
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more particularly to paragraph (d) on page 1.
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MR. HORWITZ: (Reading) Paragraph (d): "The French Government shall furnish the necessary currency to the above-mentioned Japanese troops according to the modalities to be decided in common. For this year the amount of this currency shall reach 23,000,000 Indo-Chinese piastres, or about 4,500,000 Indo-China piastres monthly. This amount shall include the currency to be furnished to the Japanese troops in TONKING, as stipulated in the previous agreements. The Japanese Government is ready to pay for the above-mentioned currency, at the choice of the French Government, in free yen, American dollar, or in gold."

MR. ONETO: I offer in evidence prosecution document No. 1529-F, in evidence under exhibit No. 615-A. This document relates to the economic position of Indo-China.

THE PRESIDENT: Admitted on the usual terms.

MR. ONETO: I will quote now the paragraph of document No. 1077 explaining the outline of the treaties of 1941. It will appear here that the

advantages are all for Japan.

1 MR. HORWITZ: Reading from page 5--

2 MR. BLEVETT: If your Honor please, we do
3 not seem to be able to locate that right away. If the
4 prosecution will wait just a moment, maybe we can
5 locate the paper.

6 MR. ONETO: Mr. President, this document
7 has already been submitted to the Court and to the
8 defense and it bears No. 651.

9 MR. HORWITZ: Beginning on page 6, item No.
10 3: "Franco-Japanese Agreement"--

11 THE MONITOR: Will the prosecution inform
12 the translation pool which document is to be read?

13 THE FRENCH MONITOR: Will you inform us what
14 document is to be read? The numbers do not seem to
15 tally.

16 MR. HORWITZ: Document No. 1077.

17 THE FRENCH MONITOR: Under what exhibit number?

18 THE PRESIDENT: 651.

19 MR. HORWITZ: 637.

20 THE FRENCH MONITOR: 637, that is all right.

21 MR. HORWITZ: Beginning at page 6, item No. 3:
22 "Franco-Japanese Agreement concerning the
23 customs system, trade and the modalities of settling
24 accounts between Japan and French Indo-China."

1 "Following is the explanation of the main
2 points of the body of the agreement according to the
3 order given:

4 "(A) The customs system.

5 "(1) Goods of Japanese or Indo-Chinese
6 origin, on being exported or imported between the
7 two countries, shall enjoy the most favored nation
8 treatment in respect to taxes, fees, and other levies,
9 and also all matters concerning rules and procedures
10 relating to exportation and importation.

11 "(2) Goods of Japanese origin, on being
12 imported into French Indo-China, shall in general be
13 subject to import duties of the minimum tariff rate,
14 but those which are listed in the annexed List A
15 shall be either exempted from duties or given reduc-
16 tions from the minimum tariff rates. Likewise,
17 goods of Indo-Chinese origin which are listed in the
18 annexed List B, on being imported into Japan, shall
19 be either exempted from duties or given reductions
20 from the statutory tariff rates.

21 "(3) As regards those goods which are
22 listed in the annexed Lists A and B, no raise in the
23 duties on them shall be permitted during one year
24 after the enforcement of this agreement. Provision
25 is made for the necessary procedures to be taken for

1 giving advance notice to the other party in case the
2 duties must unavoidably be raised. The raising of the
3 duties through the alteration of the table of customs
4 tariff goods and of the classification of the customs
5 shall not be permitted.

6 "(4) In order to receive the above-mention-
7 ed advantages in respect to customs, direct shipment
8 shall be an essential condition, in addition to a
9 certification of origin. However, certain exceptions
10 shall be recognized. Provision is made for the issu-
11 ance of certificates of origin. As a principle, in-
12 voice certified by a special organ should be attached
13 to the customs declaration.

14 "(5) The products of the other party shall
15 be exempted from all taxes and fees in respect to
16 their transit, trans-shipment, storage in a bonded
17 warehouse, warehousing, temporary importation free of
18 duty; or their re-exportation. In respect to all reg-
19 ulations and procedures concerning such goods, the
20 treatment of the most favored nation shall be accord-
21 ed to them. In respect to the levying of domestic
22 taxes on the goods imported by the other party, the
23 same domestic treatment or the treatment of the most
24 favored nation shall be accorded to them.

25 "(6) In respect also to the prohibition

1 and restriction of the exportation and importation of
2 goods between the two countries, the treatment of the
3 most favored nation is guaranteed as a general prin-
4 ciple, with certain exceptions which are provided for.
5

6 "(7) In respect to the grant of special
7 privileges on all other items relating to commerce,
8 the treatment of the most favored nation is guaran-
9 teed. However, exception is recognized in respect
10 to Japan's interests, etc. in Manchukuo.

11 "(B) Trade:

12 "(1) Every year the government authorities
13 of the two countries shall determine by agreement:

14 "(a) the articles of Indo-Chinese
15 origin and their quantities which are to be imported
16 into Japan in the following year;

17 "(b) the import quotas to be allowed
18 to Japan on goods which are placed on an import quota
19 basis in French Indo-China;

20 "(c) the articles of Japanese origin
21 and their quantities which are to be imported into
22 French Indo-China during the following year. The
23 list which as the agreement for the current year, was
24 drawn up simultaneously with the signing of the sub-
25 ject agreement, gives a total of 22 items, including
rice and crude rubber, of Indo-Chinese origin referred

1 to in (a) above, and also their quantities. The
2 French Government especially guarantees to Japan a
3 supply of 700,000 metric tons of polished rice and
4 15,000 metric tons of crude rubber. Provision is made
5 as to the way this is to be carried out. In respect
6 to goods of Japanese origin referred to in (b)
7 above, a total of 49 items, including margarine,
8 cheese, and their quantities are listed on an annual
9 quota basis, and a total of 17 items, including
10 sweetened condensed milk, etc., and their quantities
11 are listed on a quarterly basis. Provision is made
12 for the way these are to be carried out. In respect
13 to articles of Japanese origin referred to in (c)
14 above, a total of 108 items, including oysters,
15 potatoes, fruits, etc., and their quantities are listed.

16 "(2) Concerning the agreed articles referred to
17 in (a) and (c) above, the governments of the two
18 countries are bound to mutually grant to each other
19 import and export permits up to the quantities agreed
20 between them. Friendly consideration is to be given
21 to the exportation and importation of the agreed art-
22 icles in excess of the agreed quantities, to the ex-
23 portation and importation of goods other than those
24 agreed upon, and to the granting of additional quotas
25 for goods of Japanese origin in case the total quota

1 is raised for goods referred to in (b) above, which
2 are subject to the quota system. The quota for goods
3 of Japanese origin in case of the expansion of the
4 quota system is to be decided by common agreement be-
5 tween the government authorities of the two countries.

6 "(3) The protocol also provides for the
7 duty of the government authorities of the two countries
8 to notify each other the method of certifying the ori-
9 gin of goods, the list of import permits, and the
10 statistics of exports and imports."

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1 MR. ONETO: I offer in evidence prosecution's
2 document No. 1287 which is the minutes of a meeting
3 of the Privy Council in relation to Japanese economic
4 expansion.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Prosecution's document
7 No. 1287 will receive exhibit No. 660.

8 (Whereupon, the document above referred
9 to was marked prosecution's exhibit No. 660 and
10 received in evidence.)

11 MR. HORWITZ: (Reading)

12 "Investigation Committee of the Privy Council
13 on the Treaty between Japan and France for residence
14 and navigation relating to French Indo-China and on
15 the Treaty between Japan and France concerning the
16 tariff system and trade and method of its settlement
17 between Japan and Indo-China, presented for ratifica-
18 tion.

19 "Held on June 16 (Monday) 1941 at the office
20 of the Privy Council."

21 Turning to the next to the last paragraph on
22 page 2:

23 "Committeemen TAKEGOSHI and MITSUCHI inquired
24 of whether there is any anxiety in performing her duty
25 which French Indo-China owes to Japan concerning the

1 supply of rice and rubber, etc. to Japan, and on this
2 question Foreign Minister MATSUOKA replied, 'She will
3 perform her duty as arranged, without fail, unless
4 some unexpected situation happens.'"

5 Page 3:

6 "Recess from 0.05 to 1.40 p.m.

7 "Committeemen SHIMIZU and MATSUI inquired of
8 the future prospect about the development of Japanese
9 trade with French Indo-China, and on this question
10 director of the Foreign Office Trade Bureau, MIZUNO,
11 replied, 'French Indo-China is being affected by the
12 European war and her materials which had been imported
13 from her homeland and other countries have considerably
14 decreased; thereforeby the arrangment of this Treaty
15 the supply of commodities from Japan such as cotton
16 yarn and cloth, as well as dry goods, etc. will be
17 remarkably increased so as to reach a total of
18 70,000,000 or 80,000,000 yen'. MIZUNO also replied,
19 'Because the products excepting rubber which grow in
20 French Indo-China cannot be exported generally to third
21 countries, their export to Japan will be carried out
22 smoothly and among these exports rice will amount to
23 80,000,000 yen and the others to 80,000,000 yen'."

24 Turning to the second paragraph on page 4:

25 "Chairman ISHIZUKA inquired of the relationship

1 between the reason why this protocol should not be
2 officially announced and the actual effect, and on this
3 question Director of the Foreign Office Trade Bureau
4 MIZUNO replied, 'We intend to gradually enforce the
5 purports of this protocol and to extend Japanese in-
6 fluence by degrees and it will be inevitable that this
7 protocol will eventually come to the knowledge of third
8 powers.'"

9 MR. ONETO: I call the Tribunal's attention
10 to document No. 4065B, in evidence under exhibit
11 No. 654A. The first of the three telegrams of which
12 this document consists is dated 1 October 1941 and was
13 signed by Hemmen, a member of the German Armistice
14 Commission for Economic Affairs. It is related to
15 Indo-Chinese rubber.

16 MR. HORWITZ: (Reading)

17 "Telegram. Paris, German Armistice Commission
18 for Economic Affairs.

19 "1 Octboer 1941 - 2100 hours.

20 "Arrival : 1 October 1941 - 2300 hours.

21 "Economic Delegation No. 467 of 1 October 1941.

22 "Re. Telegram No. 152 of 22 September 1941.

23 "Re. Interim Report on Indo-Chinese rubber;
24 Japan/U.S.A.

25 "Negotiations have been conducted with the

1 French delegation, presided over by DE BOISANGER, in
2 line with orders as in the above telegram. At the
3 outset DE BOISANGER expressly confirmed the order,
4 reported by me in telegram No. 454 of 22 September
5 1941, to the Governor-General of Indo-China to release
6 the 5,000 tons which the Japanese had requested for
7 September. He then stated the request of his govern-
8 ment for German support of the French efforts to
9 obtain Japanese approval for delivery of 5,000 tons to
10 the U.S.A.

11 "Indo-China urgently needed the proceeds from
12 such sales for buying vital goods obtainable nowhere
13 else, and declared in answer to a question from the
14 German side, that in payment of said goods the U.S.A.
15 would neither unfreeze French blocked accounts nor
16 accept Martinique gold.

17 "French request was turned down as not in
18 accord with instructions. Concerning our demand which
19 was presented in the session, DE FOISANGER replied to
20 me yesterday on behalf of his government that it
21 appreciated the German attitude and would take the Ger-
22 man point of view into consideration during the pending
23 negotiations with Japan. He was not authorized to give
24 a more extended declaration. I pointed out to him again
25 that the German request was urgent and again brought

1 forth that not only the Japanese, but also the German
2 Government would not countenance further export of raw
3 rubber from Indo-China to the U.S.A.

4 "The German Commissioner, JEHLE, has by now
5 left for Berlin. He suggested that at the French
6 delegation, an additional release of 5,000 tons, as
7 requested by Japan, first of all for October, be
8 secured. We are continuing to urgently attend to the
9 matter and may further report on it.

10 "HEMMEN."

11 MR. ONETO: The Tribunal's attention is called
12 to document 1258, which is a basic document under
13 exhibit No. 46. This document is a treaty of residence
14 and navigation, signed on 6 May 1941, between Japan
15 and Indo-China.

16 MR. HORWITZ: (Reading)

17 "Franco-Japanese Treaty of Residence and
18 Navigation Relative to French Indo-China.

19 "Article I.

20 "The nationals and native subjects of each
21 of the two countries shall have full liberty, with
22 their families, to enter and reside in all the expanse
23 of the territories of the other. Under the condition
24 that they will conform to the laws of the country, they
25 shall enjoy the following rights:

1 "1. They shall, in all matters concerning
2 travel and residence, be treated in the same manner as
3 the nationals of the country;

4 "2. They shall, like the nationals, have the
5 right to carry on business and manufacturing industry
6 and to deal in all articles which are the objects of
7 lawful commerce, whether it be operated in person or
8 by agents, whether alone or in partnership with foreigners
9 or with nationals;

10 "3. They shall be, in matters concerning the
11 engagement in industry, trade, or profession, and
12 the pursuit of studies or scientific investigations,
13 treated, in all respects, the same as the nationals and
14 native subjects of the most favored nation.

15 "4. They shall be able to own or lease and
16 occupy homes, factories, warehouses, stores and places
17 which are necessary to them, and to lease land for the
18 purpose of residing or utilizing them for the object
19 of lawful commerce, industry, agriculture, or other
20 business.

21 "5. They shall be able, under reciprocal
22 conditions, to obtain or to possess freely all kinds
23 of movable or immovable property, which the laws of
24 the country permit, or may permit this acquisition or
25 possession to the nationals and native subjects of the

1 the most favored nation; they shall be able to dispose
2 of the said movable or immovable property by sale, ex-
3 change, donation, marriage, will or in any other manner,
4 under the same conditions which are prescribed or may
5 be prescribed in respect to the nationals themselves.
6 They shall also be able to export freely the proceeds
7 of the sale of their properties, and all accessories,
8 without being subjected, on the ground that they are
9 foreigners, to other taxes or heavier taxes than those
10 to which the nationals are subjected under the same
11 circumstances."

12 MR. ONETO: Mr. President, I now request the
13 permission of the Court to quote a short passage from
14 document No. 1077, already introduced in evidence under
15 exhibit No. 637. I quote here the outline of the
16 protocol, signed in July, 1941, increasing the rights
17 of the Japanese in Indo-China.

18 MR. HORWITZ: Reading from the top of page 6:
19 "2. The Protocol.

20 "This protocol, together with the above-men-
21 tioned treaty, forms an inseparable whole, and has the
22 same term of validity. It is composed of several
23 clauses defining Japan's special position in French
24 Indo-China. That is, the treaty provides as follows:
25 (1) The fees for foreigners' identification cards

1 shall be reduced in the case of Japanese nationals;
2 (2) Japanese nationals shall be specially permitted
3 to engage in certain occupations which are prohibited
4 to foreigners now; (3) the maximum percentage of
5 employees who may be employed in Japanese enterprises
6 shall be raised up to a specified percentage; (4) the
7 acquisition by Japanese of the ownership of immovables
8 and Annam and Tonking shall be given consideration,
9 subject to the consent of the king of the protector-
10 ates; (5) concessions in agricultural, mining, and
11 hydraulic power enterprises shall be granted in Indo-
12 China to Franco-Japanese joint concerns under special
13 terms; (6) Japanese nationals shall be permitted under
14 fixed conditions to open and manage Japanese schools
15 for giving Japanese education; (7) to discuss economic
16 problems of both countries, an economic conference com-
17 posed of the government and civilian representatives
18 of the two countries; (8) the problems concerning coastal
19 trade in Indo-China, navigation and fishing in the in-
20 land seas or territorial waters, and problems of aviation
21 wireless stations, and undersea cables, shall be settled
22 through consultations between the two governments; as
23 regards the problems of marine transportation, the
24 governments of the two countries shall encourage their
25 solution through the cooperation of the shipping

1 interests. And this protocol is not to be published,
2 lest third powers will share equally with us the above-
3 mentioned various privileges by virtue of the most
4 favored nation clause."

5 MR. ONETO: I wish to call the Tribunal's
6 attention now to document No. 4025E (8), in evidence
7 under exhibit No. 652. The last part of this docu-
8 ment refers to Japanese economic activity which is
9 increasing, particularly as regards rice and rubber.
10 This will be the last document of an economic nature
11 which I intend to submit to the Court.

12 MR. HORWITZ: Reading from page 2:

13 "Parallel to the military occupation is the
14 economic and other seizures, especially of all valuable
15 raw materials.

16 "The Indo-Chinese-Siamese border commission,
17 presided over by a Japanese, consists of 93 Japanese,
18 14 Siamese and 4 Frenchmen. At present the commission
19 sits at Saigon; there are already serious differences
20 of opinion, and friction between the Japanese and
21 Siamese, who otherwise completely stand aloof from the
22 Japanese. In Saigon there are twenty Japanese news-
23 paper correspondents. There are 24 Japanese firms as
24 compared with 14 before the war. Competition between
25 the new and the old Japanese firms has already set in.

1 Japanese agents swarm over the country in all direc-
2 tions. There is marked economic espionage, e.g., care-
3 ful inspection of rubber plantations. In Cambodia the
4 Japanese now buy rice fields and Kapok plantations.
5 Attempts to buy small rubber plantations in the vicinity
6 of Saigon from Annamite and Chinese owners have failed
7 thus far. It is, however, foreseeable that in case of
8 a continued worsening of the market, the Japanese will
9 obtain large rubber plantations, even from French
10 owners, since the economic agreement with Indo-China
11 stipulates them unlimited right of settlement as well
12 as the right to acquire real estate. According to
13 informations here a Rubber Syndicate has been formed
14 or is forming in Japan, chiefly supported by MITSUI,
15 for buying rubber plantations in Indo-China.

16 "Identical Telegram to Tokyo and Bangkok.

17 "NEUMANN."

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1 MR. ONETO: To end up my explanation, I wish
2 to submit now to the Court documents concerning events
3 in Indo-China from the date March, 1945.

4 THE PRESIDENT: How long will it take you to
5 complete your case, Mr. Oneto?

6 MR. ONETO: Mr. President, I have now just
7 five more documents to present to the Court, and I
8 estimate that it will take me not more than one hour,
9 possibly less, to finish up my presentation.

10 THE PRESIDENT: Proceed.

11 MR. ONETO: I now present document No. 2664-A.
12 This document is Decision No. 16, dating from February
13 1, 1945, of the Supreme War Leadership Council. It
14 relates to steps to be taken in Indo-China by Japan
15 owing to the development of the general situation in
16 the Pacific.

17 THE PRESIDENT: Admitted on the usual terms.

18 CLERK OF THE COURT: Prosecution's document
19 No. 2664-A will receive exhibit No. 661.

20 (Whereupon, the document above re-
21 ferred to was marked prosecution's exhibit No.
22 661 and received in evidence.)

23 MR. HORWITZ: (Reading)

24 "THE SUPREME WAR-LEADERSHIP COUNCIL DECISION
25 No. 16.

1 "RE MEASURES TOWARDS FRENCH INDO-CHINA TO
2 MEET THE SUDDEN CHANGE IN THE SITUATION. February 1,
3 1945.

4 "I. Principle.

5 "1. In view of the change in the war situation
6 and the attitude of French Indo-China, the Japanese
7 Empire, based on the absolute need of self-existence
8 and self-defence, shall resort to timely independent
9 military action.

10 "The time for resorting to military measures
11 shall be determined separately.

12 "2. Our plans are to be kept in strict
13 secrecy until the time of launching military measures.

14 "II. Essential Points.

15 "1. Prior to the exercising of military force,
16 we shall first of all have our Ambassador, with a
17 time limit, demand the following points of the
18 Governor-General of French Indo-China, in order that
19 the diplomatic procedure may be completed as quickly
20 as possible.

21 "Items.

22 "In view of the general situation, especially
23 of the fact and tendency of exercising of military
24 power by the American forces against the territory
25 of French Indo-China, the Japanese Empire, in order to

1 perfect the defence of Indo-China, shall request the
2 Governor-General of French Indo-China to agree to
3 the following as the materialization of his definite
4 resolution to collaborate with the Japanese Empire
5 against the exercising of military action by the
6 U.S.A. and Britain towards Indo-China and do their
7 utmost to defend Indo-China, on the basis of the
8 fundamental spirit of the joint defence of Japan and
9 French Indo-China.

10 "a) So long as the present situation con-
11 tinues, the Military and armed police forces of
12 French Indo-China should be placed under the joint
13 command of the Japanese Army, and shall act, one and
14 all, according to the orders of the Japanese Army in
15 regard to organization, allotment and movement etc.,
16 of units, arms and materials, and such organs as
17 railways, shipping, communications etc., which are
18 of strategic necessity shall be placed under the
19 control of our Army.

20 "b) Immediate orders shall be given to all
21 organs in French Indo-China to cooperate fully and
22 loyally in accordance with the requests of the
23 Japanese Empire.

24 "c) The aforesaid two items shall be accepted
25 in toto within 6 hours.

1 "Upon the lapse of the aforementioned time
2 limit, the Imperial Forces shall by considering the
3 French Indo-China Governor General as lacking in
4 sincerity as regards joint defence, resort to nec-
5 essary measures.

6 "2. Even in the event of French Indo-China
7 accepting our demands in toto, the French Indo-Chinese
8 Military and armed police forces shall be reorganized.

9 "3. Should French Indo-China refuse to
10 accept our demands, the Japanese Empire shall deal
11 with French Indo-China with military force and place
12 same for the present, under military control.

13 "4. The measures towards Annam etc., shall
14 be as follows:-

15 "a) The Japanese forces on the spot shall
16 elevate and support the independent positions of
17 Annam etc., as they deem fit, and devise plans so as
18 to make them cooperate with us actively.

19 "b) The independence of Annam etc., shall
20 be recognized after taking the general situation
21 into consideration.

22 "As regard the time and manner etc., of
23 recognizing independence same shall be determined
24 separately.

25 "5. Along with the Military disposition,

1 the Imperial Government shall issue a communique at
2 an opportune moment.

3 "6. The Japanese Government shall, depending
4 upon the necessity, explain its true intentions -
5 especially its non-aggressive intentions to Soviet
6 Russia.

7 "7. The Japanese Government shall report to
8 Germany its true intentions as regards the disposi-
9 tion of French Indo-China and make her follow on
10 along the same course as Japan.

11 "8. The French Military forces etc. in the
12 Kwangchow-Wan Leased Territory and other areas are
13 to be dealt with similarly to French Indo-China.

14 "Note: The rights and interests of the French
15 people in general shall be treated as leniently as
16 possible."

17 MR. ONETO: Prosecution document No. 2663 is
18 now offered in evidence. This is a telegram from Am-
19 bassador MATSUMOTO to the Minister of Greater East
20 Asia, the defendant SHIGEMITSU. This telegram was
21 sent from Saigon on 3 March 1945. It refers to an
22 ultimatum to be handed to the Governor-General at
23 Indo-China, with the view of placing the whole of the
24 Indo-Chinese territory under total control of the
25 Japanese Army.

1 THE PRESIDENT: Admitted on the usual terms.

2 CLERK OF THE COURT: Prosecution's document
3 No. 2663-A will receive exhibit No. 662.

4 (Whereupon, the document above re-
5 ferred to was marked prosecution's exhibit
6 No. 662 and received in evidence.)

7 MR. HORWITZ: (Reading)

8 "From: Saigon on March 3, 1945, at 1930
9 hours.

10 "To: This Ministry on March 3, 1945, at
11 2100 hours.

12 "TO GREATER EAST ASIA MINISTER SHIGEMITSU.

13 "FROM AMBASSADOR MATSUMOTO.

14 "TO GREATER EAST ASIA MINISTER.

15 "TO FOREIGN MINISTER.

16 "No. 21 (Directions Code, Very Urgent)

17 "(French Indo-China Disposition Problem.)

18 "Referring to your wire No. 24.

19 "1. This Ambassador is now under consulta-
20 tion with the military authorities and the final
21 decision has not yet been made, but we shall call
22 on the Governor-General at his official residence
23 toward evening today. After explaining the general
24 situation, we will tell him that under the spirit of
25 cooperative defence, the Japanese Government must

1 request the Governor to make a grave decision.
2 Then we shall read 'Aide memoire' (without recording
3 any time limit) which was made up from the gist of
4 paragraph 1, outline I of the Outline of the Supreme
5 Council's Decision and will request him to think about
6 it. In case the Governor accepts the request on the
7 spot, we shall ask his signature on the declaration
8 as indicated on the separate telegram director's
9 code Number No. 22, and leave. If he does not seem
10 to accept, we shall give him two hours for considera-
11 tion, and tell him that if he fails to answer by the
12 time, we must take necessary measures; and then we
13 will come back to my official residence and wait for
14 the answer. This is my intention.

15 "2. In regard to the disarmament that is
16 provided in Outline II of the Outline of Decision,
17 if Outline I is accepted without the Army Commander's
18 explanation of the same, some complications will
19 arise in carrying out the Outline II. Not only that,
20 but they earnestly request that the expression of
21 the Governor's intentions be made before carrying it
22 out. Therefore, we have decided to explain in case
23 the Governor-General consents, that we must disarm
24 the French Indo-China forces in order to reorganize
25 them, and we will have the Governor-General make this

1 point clear in his declaration.

2 "3. An agreement has been made with our Army
3 Commander that he would carry it out after making
4 full contact with the Government. Therefore, we
5 hope you will set up a complete liaison with the
6 military authorities."

7 THE PRESIDENT: Well, it is now almost noon.
8 We will adjourn until half past one.

9 (Whereupon, at 1158, a recess was
10 taken.)

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1 AFTERNOON SESSION

B 2 The Tribunal met, pursuant to recess, at
a 3 1330.

D 4 MARSHAL OF THE COURT: The International
u 5 Military Tribunal for the Far East is now resumed.

d 6 THE PRESIDENT: Mr. Oneto.

a 7 MR. ONETO: I offer in evidence prosecution
8 document No. 2667. It is a report dated 17 December
9 1945, and relates the history of the Japanese 38th
10 Army. It reports the activities and steps taken by
11 the Japanese in Indo-China during the course of the
12 year 1945.

13 THE PRESIDENT: Admitted on the usual terms.

14 CLERK OF THE COURT: Prosecution's document
15 No. 2667 will receive exhibit No. 663.

16 (Whereupon, the document above
17 referred to was marked prosecution's exhibit
18 No. 663, and was received in evidence.)

19 MR. HORWITZ: Reading from the bottom of
20 page 3:

21 "THE DISPOSITION OF FRENCH INDO-CHINA."

22 "(1) The purpose of the disposition of
23 French Indo-China.

24 "The attitude of the French authorities to-
25 wards the Japanese-French common defense of Indo-China

1 were rapidly lacking sincerity in accordance with the
2 general war situation, especially with the American
3 progress in the Philippines. In spite of the repeated
4 expostulations of the Japanese authorities, the French
5 at last came to prevent the Japanese war preparations
6 in Indo-China in every sphere, and it became evident
7 that, if the Japanese left the situation at that, they
8 would find themselves in quite a difficult position;
9 between the devil and the deep sea, in case of the
10 landing of American Forces.

11 "Thus, the disposition of French Indo-China
12 was attempted to awake the sincerity of the French
13 authorities and to make them contribute to the full
14 extent to the Japanese war preparations.

15 "(2) The general policies of the disposition.

16 "The Japanese Government, in order to supply
17 to the changed situation decided, at the Supreme War
18 Guiding Conference in February 1945, the following
19 policies concerning French Indo-China:

20 "The Japanese authorities, taking into ac-
21 count the general situation, especially the American
22 progress towards Indo-China regions, and in order to
23 accomplish the defence of Indo-China, will demand that
24 the Governor General of French Indo-China should con-
25 sent to the following propositions, as a concrete

1 token of the determination to defend the Indo-China
2 territory against the eventual American operations
3 towards it, in collaboration with the Japanese, ac-
4 cording to the fundamental spirit of Japanese-French
5 common defence of Indo-China (See the appendices No. 1 -
6 Protocol concerning Japanese-French common Defence of
7 Indo-China; No. 2 Local treaties based upon the pre-
8 ceding.)

9 "(a) As long as the present circumstances
10 last, the French troops and armed police will be put
11 under the Japanese command and will act solely accord-
12 ing to its directive as for the organization, disposi-
13 tion and movement of the troops, arms, and munitions,
14 and materials.

15 "(b) The organizations particularly neces-
16 sary for the war conduct, such as railways, sea trans-
17 portations, and communication, will be put under the
18 Japanese controls.

19 "(c) The Governor General will immediately
20 give instructions to all the organizations in French
21 Indo-China to collaborate fully and faithfully with
22 the Japanese upon their demands.

23 "(The above three items were in fact pre-
24 sented officially in the demand which Ambassador
25 MATSUMOTO made to Governor-General DE COUX on Mar).".

1 "In case the Governor General accepts fully
2 the Japanese demands, the Japanese will not go beyond
3 the reorganization of the French troops and armed
4 police. If not, the Japanese will be obliged to ap-
5 peal to arms and resort to military control. In that
6 case, the following principles will be adopted:

7 "(a) Even if the French rejects the Japanese
8 demands, the relations between the two countries will
9 not be considered as being at war.

10 "However, Japan will not be bound by the
11 existing treaties, concerning French Indo-China.

12 "(b) Japan will not admit the execution of
13 functions to the Governor General and his leading staff
14 of the Government, but their personal treatment will be
15 as moderate as possible.

16 "(c) The lower organizations of the Govern-
17 ment will not be touched and will be utilized as they
18 are.

19 "(d) The French troops and armed police will
20 be disarmed and reorganized. Those who resist at the
21 disarmament, however, will be treated as prisoners.

22 "(e) The French civilians and their proper-
23 ties will not be treated as for enemy nation, but will
24 be treated as moderately as possible. However, in
25 the case of military necessity, the Japanese may pro-

1 cced to the control of private properties and the re-
2 striction of habitation and movement.

3 "(3) The development of the disposition.

4 "On March 9, 1945, at 1900 (Japanese time)
5 Ambassador MATSUMOTO visited Governor-General DECOUX
6 at his official residence in Saigon, according to the
7 instructions of the metropolis. They talked about the
8 general war situation, and after the various discussions,
9 the Governor-General admitted the possibility of
10 American Forces' landing in Indo-China. Hence the Am-
11 bassador requested him in the authority of Governor
12 General invested with full powers to manifest his sin-
13 curity towards Japan in strengthening Japanese-French
14 common defence in the present circumstances. He ex-
15 plained the above-mentioned conditions which the Japa-
16 nese Government had instructed him to propose to the
17 Governor-General, and asked to give reply by 2200. He
18 took leave after having warned that the Japanese Army
19 would be obliged to take necessary measure if the
20 reply was not favourable.

21 "About 2220 Captain ROBIN brought the reply
22 of the Governor-General to the Ambassador, which was
23 found qualified and which the Japanese authorities
24 could not help considering as rejection."

25

1 "On this, the Commanding General of the
2 38th Army found himself under the necessity of
3 taking decision to appeal to arms, according to
4 the instructions which had been given him by the
5 General Headquarters, and ordered all these forces
6 immediately to disarm the French troops and armed
7 police.

8 "b) The Japanese forces succeeded in
9 disarming the main forces in a few days, though
10 they met some resistance in Hanoi, Saigon, Phnom-
11 Penh and Nhatrang. However, the Japanese paid
12 considerable sacrifice in disarming the French
13 troops which resisted in the strong fortresses
14 in the north frontier regions, such as Lanson,
15 Dong Dang, and Moncay.

16 "Then the Japanese army proceeded to
17 suppress French detachments stationed in the remote
18 countries and wipe out French contingents who had
19 escaped into mountains, while endeavouring to re-
20 establish the public order and to revive the ad-
21 ministration. In about one month's time, public
22 order was gradually re-established, except in the
23 remote corners, public feelings were reassured,
24 and various organizations generally recovered their
25 former activities."

1 "It took a considerable time to clear the
2 mountain range of Annam, Chinese frontiers, moun-
3 tainous regions of Laos of the remnants of French
4 troops and it was May 15 that the Japanese army
5 finished its armed operations.

6 "Meanwhile, the activities of Viet-Nam
7 Party in the Northern Indo-China became more and
8 more vigorous, and especially its disturbances
9 of public security, aiming to dispel Japanese
10 forces in order to accomplish the full independence
11 of their people, grew rife. The Japanese army was
12 compelled to continue to employ a considerable strength
13 in painstaking work of sweeping Viet-Minh partisans,
14 until the cessation of hostilities of August 15.

15 "c) The French troops disarmed were
16 divided into the Frenchmen group and the native
17 group; the former was concentrated and interned
18 chiefly in Saigon and Hanoi, and as for the latter,
19 a part of it was adopted in the Japanese army as
20 auxiliaries, and the rest was planned to be reorgan-
21 ized into the voluntaries and the national armies,
22 but that plan was not achieved, though preparations
23 were being made.

24 "d) Armed police were indispensable for the
25 maintenance of public order, the Japanese army

1 rearmed the minimum native policemen, excluding
2 French ones, and distributed them to each province.
3 But the total numerical strength of them was below
4 the half of the former one.

5 "e) As for French civilians, the Japanese
6 army, both on military necessity and for safeguard's
7 sake, restricted their residence in Hanoi, Haiphong,
8 Hue, Nhatrang, Saigon, Phnom Penh and Dalat.

9 "f) Administration organizations were
10 left intact, and though a small number of Japanese
11 officials took charge of some important positions,
12 almost all officials, both French and Annemite, were
13 permitted to remain at their posts. Thus the Japanese
14 army arranged to re-establish public order as soon
15 as possible, preventing social uneasiness and dis-
16 orders and to make all Indo-China co-operate with
17 the Japanese in war preparations.

18 "h) As a logical result of Japan's
19 disposition of French Indo-China, Annam and to
20 other nations proclaimed their independence for
21 themselves and were realizing their independence
22 substantially. The Japanese Army took the attitude
23 not to interfere in the internal affairs and left
24 them free to do what they wanted. Meanwhile the
25 Japanese army kept their actions always under eye

1 lest they should be off the rails, ridden by a
2 mistaken idea of independence and race-conscious-
3 ness, and always paid minute attention not to make
4 them repeat the same un-cooperative attitude as the
5 French regime.

6 "i) The progress of battle at the moment
7 of the disposal of French Indo-China is shown in
8 the appended plan No. 1.

9 "4. The conclusion.

10 "Japan's disposition of French Indo-China
11 was really inevitable step as the result of the
12 fact that, facing eventual American invasion, the
13 French authorities could not be hoped to correct
14 their unfriendly attitude and to co-operate with
15 the Japanese in rapid war preparations and to
16 facilitate the operations. It was not that Japan
17 regarded the French as enemies, or attempted to
18 occupy the Indo-China territory, or tried to set
19 the Annamite on the French.

20 "Moreover, the disposition of French Indo-
21 China was based upon the directives of TOKYO, and
22 was not an arbitrary decision of local Japanese army.
23 All the Japanese troops, militarists, officials,
24 civilians however humble their posts might have
25 been, always acted solely by orders of superior

1 commanders, and fulfilled their responsibilities
2 most faithfully according to each given duty."

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1 MR. ONETO: I now present prosecution document
2 No. 2634. This is a group of ten proclamations from
3 the High Command of the Japanese Army and it sets forth
4 the series of steps to be taken to achieve control
5 over the military and administrative organizations of
6 Indo-China.

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Prosecution's document
9 No. 2634 will receive exhibit No. 664.

10 (Whereupon, the document above
11 referred to was marked prosecution's exhibit
12 No. 664, and was received in evidence.)

13 MR. HORWITZ: (Reading) "Proclamation No. 1.
14 To all the Peoples of Indo-China.

15 "The Japanese Army declares that, so as to
16 preserve its own existence and insure peace in Great
17 East Asia, it intends to abolish the present government
18 of Indo-China.

19 "The Japanese Army fights against no one but
20 the present government of Indo-China and particularly
21 its troops, and not the natives serving in it, and will,
22 consequently, cause no harm to peoples. Since, however,
23 unforeseen accidents are always liable to happen, on
24 the fighting grounds, the population is invited to take
25 all necessary precautions so as to avoid becoming

1 victims of such accidents.

2 "The population must, therefore, while they
3 remain quiet and refrain from any unconsidered action,
4 do their utmost to perform their usual duties.

5 "Anyone hampering in the least degree the
6 operations of the Japanese Army will be prosecuted and
7 punished according to martial law.

8 "10 March 1945. The Commander-in-Chief of
9 the Japanese Army.

10 "Proclamation No. 2. To the French Population
11 of Indo-China.

12 "The Japanese Army regrets to declare that the
13 friendly relations which existed between Japan and
14 French Indo-China can no longer be maintained as a
15 result of the change in circumstances.

16 "However, the Japanese Army only fights against
17 those who, upon the order of the present government and
18 its troops, oppose the Japanese Army, and it retains its
19 friendship towards the French people as heretofore.

20 "The French population may, therefore, trusting
21 the Japanese Army, and refraining from any unconsidered
22 action, continue to live in peace and security.

23 "It must, to this end, observe the following
24 rules:

25 "1. Those who desire to remain in their present

1 position and collaborate with the new government must,
2 without delay, present themselves to the respective
3 offices and state their intention.

4 "2. It is forbidden to travel or move house
5 without permission.

6 "3. Fire arms, ammunition, radio sets, cameras,
7 binoculars, typewriters, must be handed, without delay,
8 to the Japanese Army on the spot, or to the Liaison
9 Headquarters. Sale or transfer of such articles is
10 forbidden.

11 "4. It is forbidden to go out during the
12 night (i.e. between sunset and dawn).

13 "5. It is forbidden to hold meetings of more
14 than four persons; to walk in groups of more than
15 four persons.

16 "6. The doors of houses, compartments and
17 apartments must be left open.

18 "10 March 1946. The Commander-in-Chief of
19 the Japanese Army.'

20 "Proclamation No. 3."

21 THE PRESIDENT: I notice there are eleven
22 proclamations.

23 MR. MORWITZ: Yes, there are.

24 THE PRESIDENT: Is it necessary to read them
25 all? There may be some particular features that you

1 would like to stress, but why read all those proclama-
2 tions?

3 MR. ONETO: Mr. President, I believe that
4 most of these proclamations are of very great impor-
5 tance to the case of the French prosecution. However,
6 in order not to take up undue time, I shall leave out
7 two of these proclamations which relate to economic
8 matters. I desire to ask the Court to read the others
9 later.

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1 MR. HORWITZ: I shall read proclamations
2 4, 7, 9 and 10.

3 "Proclamation No. 4. To all Indo-Chinese
4 Police Officials: The Japanese Army declares that it
5 has just been compelled to carry out the disarming of the
6 police forces with the only aim of putting an end to
7 the activities of the French Police officials.

8 "The Japanese Army intends, by granting Indo-
9 Chinese police officials the same treatment as before,
10 and by protecting them, to re-establish as soon as pos-
11 sible the operation of the various police organisms and
12 to institute 'Indo-Chinese Police organisms.'

13 "The preservation of public order being mainly
14 dependent on the activities of the police organisms of
15 the Indo-Chinese members of the Police Force are invited
16 to show their confidence in the Japanese Army to return
17 to the competent police office immediately and carry
18 out their work as previously.

19 "March 10, 1945. Commander-in-Chief of the
20 Japanese Army.

21 "Proclamation No. 7. Every person committing
22 the following actions will be put to death or severely
23 punished according to martial law:

24 "1. Any action of treachery towards the
25 Japanese Army.

 "2. Espionage.

1 "3. Any destructive or harmful action to
2 railroads, telephone, telegraph, canals, installa-
3 tions, factories, buildings, etc. used by the Japanese
4 Army.

5 "4. Any action prejudicial to the personnel
6 of the Japanese Army.

7 "Destruction of weapons, ammunition or all
8 other property of the Japanese Army.

9 "5. All actions like the illicit profit or
10 unlawful profit, blackmarket, etc. which are contrary
11 to the principles of the Japanese Army and are liable
12 to disturb the economic system.

13 "6. All other actions contrary to the pro-
14 hibitions promulgated by the Commander-in-Chief of
15 the Japanese Army.

16 "7. All actions, attempts or accomplices
17 in the above mentioned activities.

18 "10 March 1945, Commander-in-Chief of the
19 Japanese Army.

20 "Proclamation No. 9.

21 "1. All French Nations (except those who are
22 authorized to remain in their present position) will
23 have within the next 10 days (from the date of the
24 present proclamation) to remove themselves and their
25 property to one of the seven (7) towns here mentioned

1 and cohabit in the houses of the French inhabitants.

2 "Hanoi, Vinh, Hue, Nha-trang, Saigon (with
3 the exception of Cholon), Phnom-penh and Vientiane.

4 "II. The following regulations will be ob-
5 served at the time of the removal above mentioned.

6 "1. Only one servant will be allowed.

7 "2. Any person in a serious state of illness,
8 together with the person nursing him or her, may, with
9 the permission of the local authorities, postpone her
10 departure until she is able to travel.

11 "3. The inhabitants of the seven towns above
12 mentioned must, without delay, have the members of
13 their families, as well as their servants (only one
14 is permitted), registered at the local office of the
15 Liaison Headquarters.

16 "Persons moving to the seven designated
17 towns must register in the same way when they arrive
18 in the town.

19 "Commander-in-Chief, Japanese Army.

20 "Proclamation No. 10.

21 "The steps taken recently by the Japanese
22 Army, as it has been clearly stated in the official
23 communique of the Government of Japan, are the con-
24 sequence only of the lack of sincerity of the French
25 authorities in Indo-China in the carrying out of the

1 agreement for the common defense of the country.

2 "The Japanese Army, in view of the present
3 military situation, is fully prepared to insure or
4 assume the total responsibility of the defense of
5 Indo-China in collaboration with the peoples of Indo-
6 China.

7 "Our first task, therefore, is to reassure
8 the population and re-establish public order so that
9 the defense of Indo-China be thus quickly strengthened.

10 "It goes without saying that the Japanese
11 Army in no way intends to change the autochthonous
12 organization of the government; that it will respect
13 all decrees and decisions in force; that IT will main-
14 tain the administrative organisms in existence and
15 will protect without discrimination all government
16 employees who wish to work with it.

17 "Consequently, government employees, and
18 members of the Council of Notables, must endeavor
19 to discharge their duty at all times with reference
20 to the principles mentioned above and trusting the
21 Japanese Army entirely.

22 "As to the inhabitants in general who col-
23 laborate with it, their lives and property, as well
24 as their rights and interests, will be protected.
25 They may, therefore, have entire confidence in the

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1 Japanese Army and devote themselves to the work of
2 reconstruction of the new Indo-China, together with
3 government personnel and members of the Council of
4 Notables.

5 "The Japanese Army will support any en-
6 deavor to satisfy the eager desire of independence,
7 so dear to all the peoples of Indo-China. It de-
8 clares at the same time that it is its firm intention
9 to fulfill the duties incumbent upon It for the de-
10 fense of Indo-China, in collaboration with the above-
11 mentioned peoples, and to help their sincere national
12 movement in conformity with the fundamental principles
13 of the declaration of Greater East Asia.

14 "March 12, 1945. Commander-in-Chief,
15 Japanese Army."

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1 Japanese Army and devote themselves to the work of
2 reconstruction of the new Indo-China, together with
3 government personnel and members of the Council of
4 Notables.

5 "The Japanese Army will support any en-
6 deavor to satisfy the eager desire of independence,
7 so dear to all the peoples of Indo-China. It de-
8 clares at the same time that it is its firm intention
9 to fulfill the duties incumbent upon It for the de-
10 fense of Indo-China, in collaboration with the above-
11 mentioned peoples, and to help their sincere national
12 movement in conformity with the fundamental principles
13 of the declaration of Greater East Asia.

14 "March 12, 1945. Commander-in-Chief,
15 Japanese Army."

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THE PRESIDENT: Mr. Blewett.

MR. BLEWETT: If the Court please, I call the attention of the Tribunal to the affidavit attached to these papers. The affidavit, if the Court please, seems to be an affidavit that the person, the affiant, is familiar with these papers, and makes an affidavit that these are the proclamations which were issued.

That strikes us, your Honor, as testimony; and we would inquire of the prosecution if that witness is to be produced for cross-examination.

THE PRESIDENT: Well, all certificates are testimony to some extent. He goes a little further than the average person who certifies. He says, "These proclamations were issued, I am the Chief of Staff and was the Chief of Staff during the period."

Do you really contest what he says? If so, well, we may direct he be called for cross-examination. It would seem to be a waste of time, nevertheless.

MR. BLEWETT: We also call your Honor's attention to another statement which seems very clearly to be testimony, and that is that this was the result of an over-all order from Tokyo.

THE PRESIDENT: We can note the fact, but there is no occasion for any debate about it.

1 MR. ONETO: I now present prosecution document
2 No. 2655. This is a warning launched on 11 April
3 1945 by the Provisional Government of the French Repub-
4 lic to the Japanese Government.

5 This will be the last document presented
6 today by the French prosecution.

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Prosecution's document
9 No. 2655 will receive exhibit No. 665.

10 (Whereupon, the document above
11 referred to was marked prosecution's exhibit
12 No. 665, and was received in evidence.)

13 MR. HORWITZ: (Reading) "11 April 1945.
14 Warning to the Japanese Government.

15 "The Provisional Government of the French
16 Republic having serious reasons to fear for the security
17 of the French and Indo-Chinese populations living in
18 the Indo-Chinese Union or residing in the Chinese
19 territories occupied by the Japanese Forces as well as
20 for the security of Allied Power nationals present in
21 Indo-China, solemnly reminds the Japanese Government
22 that any violence or brutality or any reprisals exer-
23 cised towards its nationals or tolerated as a result of
24 the tacit consent or passivity of the Japanese author-
25 ties charged with the preservation of order constitute

1 the gravest violation of international laws.

2 "Therefore, it holds responsible not only the
3 Japanese governmental authorities and the High Command
4 of the Japanese army, but also enemy **nationals**, civi-
5 lian and military personnel of all ranks who, charged
6 with administration, protection or supervision, exer-
7 cise, or permit to be exercised under any pretext, acts,
8 even though unaccompanied with violence, inimical to
9 the existence or the security of the French and Indo-
10 Chinese populations.

11 "The Provisional Government of the French
12 Republic declares moreover that any individual whether
13 or not entrusted with responsibility, who may be con-
14 victed of having injured or having permitted injury
15 to the security of its nationals will be considered
16 as a war criminal and treated as such."

17 THE PRESIDENT: Mr. Logan.

18 MR. LOGAN: If the Tribunal please, there is
19 still some unfinished business with respect to the
20 French phase. At the beginning of this evidence, there
21 was a statement with respect to which of the accused
22 were in power, were the words used by the prosecution,
23 and we pointed out on page 6800 of the record that
24 Marquis KIDO resigned as Home Minister on August 30,
25 1939, and Mr. ARAKI resigned as Minister of Education

1 in the latter part of 1939. I understand that date was
2 August 30, also. You submitted that question to Mr.
3 Oneto to answer, and it has not been answered.

4 I also understand, your Honor, that Mr. HIRA-
5 NUMA resigned on the same date, August 30, 1939.

6 And these documents which have been read all
7 refer to the years 1940 and subsequent.

8 MR. ONETO: Mr. President, most of the verifi-
9 cations demanded now have been made. But with the
10 Court's permission, I propose to offer those verifica-
11 tions to the Court at the same time as I provide the
12 certificates demanded for certain official documents
13 which have been cited in the case.

14 THE PRESIDENT: Well, you are not in a posi-
15 tion to make any corrections now?

16 MR. ONETO: Mr. President, I have not at hand
17 the official documents which would permit a discussion
18 with the defense.

19 THE PRESIDENT: Well, we will proceed with
20 the next phase.

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1 MR. PRESIDENT: Mr. Chief Prosecutor.

2 MR. KEENAN: Mr. President, the next phase
3 as the Court has been informed pertains to the rela-
4 tions between Japan and the Union of Soviet Socialist
5 Republics, to be presented by Minister S. A. Golunsky,
6 associate prosecutor from the Soviet Government,
7 aided by Major General Vasiliev, district attorney
8 for the city of Moscow, Major General Tadevosyan,
9 assistant to the Attorney General of the Soviet
10 Republic, Colonel Rosenblit, senior assistant to the
11 Judge Advocate of the Armed Forces of the Union of
12 Soviet Socialist Republics, and Colonel Ivanov, head
13 of the investigation division of the Ministry of
14 Armed Forces of the Soviet Republic, and myself es-
15 pecially, should there be any objections prior to or
16 during the address, opening address, of Mr. Golunsky.

17 THE PRESIDENT: Mr. Cunningham.

18 MR. CUNNINGHAM: If the Tribunal please, I
19 wish to object to the opening statement of the Russian
20 prosecution section which is about to be read before
21 the Tribunal for the reason that, first, it is sixty-
22 five pages in length--more pages than embrace the
23 opening statement of the Chief Counsel of the prosecu-
24 tion.

25 The first twenty pages or more relate to a

period of time between 1900 and 1922, far beyond the
dates covered by the Indictment, purely historical
matter, not in issue in this case. The alleged
historical facts are matters of great controversy
and if the prosecution is allowed to try to prove
them the defense also must be allowed to try to dis-
prove them and the trial will be thus prolonged in-
definitely.

Twenty pages are simply argument, summation,
opinions and conclusions of counsel, and inflammatory
remarks as well as extended comment upon the testimony
of the prosecution's own witnesses to date.

Another twenty pages are devoted to justifying
the Russian activities in Manchuria and areas of
China, and other Russian explanations purely not proof
of the facts and the offenses charged in this case.

About five pages, your Honors, which could
very easily be condensed into three, are about what is
expected to be proven by the documents and the witnesses.

I object to the opening statement therefore
and ask that the Court admonish the Russian prosecution
that the purpose of an opening statement is to give a
brief, concise statement of what will be proven. This
objection is made in advance of the reading in order to
avoid delay and interruption during the presentation

1 of an abbreviated, condensed opening statement. Your
2 Honors, I believe that our good nature and generous
3 attitude in this respect is being abused in this in-
stance.

4 THE PRESIDENT: We do not profess to be
5 good natured or generous but simply just.
6

7 Mr. Chief Prosecutor.

8 MR. KEENAN: Would the Court care to hear from
9 the Chief of Counsel on this objection?

10 THE PRESIDENT: I think so. I am looking
11 at the terms of the Charter.

12 MR. KEENAN: Mr. President, at the outset
13 it would seem unnecessary to remind defense counsel
14 and any others that this cause will be judged on the
15 evidence that is presented before this Tribunal. To
16 ascribe to this honorable Tribunal the qualities that
17 would make any such remark pertinent as the assertion
18 or advancement of inflammatory statements would be,
19 in the opinion of the Chief of Counsel, beyond the
20 bounds of propriety.

21 Often the learned Court has reminded all
22 counsel that there is no jury present in these pro-
23 ceedings; and, Mr. President, in considering the
24 manner and fashion in which it will be outlined, the
25 case concerning a certain phase, having to do with a

complaining nation, it would seem that sufficient
1 liberality would be extended to permit enough of back-
2 ground to be set forth so that the evidence when pre-
3 sented might have the significance, if it is so
4 justified, that learned prosecutors in assembling the
5 evidence and analyzing it believe that it deserves.
6

This being an international proceeding
7 it is not unnatural that the methods of presentation
8 where representatives, and incidentally those who
9 have occupied high positions in their own government,
10 will differ from their concept of the exact functions
11 to be performed thereby. If some of the remarks seem
12 to defense counsel to be inflammatory in nature, it
13 perhaps is not inappropriate to remind defense counsel,
14 and whoever else needs to be reminded, that we are
15 describing and that this prosecution is based upon a
16 claim of actions involving wholesale taking of human
17 life, that it is very difficult to describe in the
18 staid language that sometimes is required to be used
19 in all of the courtrooms of the world. It is difficult,
20 Mr. President, to create a parlor word for the descrip-
21 tion of the hideous crime of murder.
22

23 Shortly, Mr. President, or briefly, it is
24 not counsel who make the events lurid by description,
25 if the theory of the prosecution is correct; it is

these accused who have made these events lurid by
1 their perpetration of them and the nature of the
2 crime.

3 Mr. President, the Charter gives the
4 prosecution certain powers as well as responsibilities
5 to present its case as it believes it to be proper.
6 The defense, of course, will have its own task to
7 state its defense in its own manner in which it
8 chooses. The prosecution has that same privilege so
9 long as justice is not impaired in the manner and
10 fashion chosen.

11 If there are any statements averred to
12 that will not be substantiated later in the offering
13 of proof, that would not be novel in any lawsuit of
14 any type in any land. If the allegations stated are
15 not proven by the evidence, of course, this learned
16 and honorable Court will entirely disregard the same
17 as though they never had been uttered. If any immaterial
18 matter is referred to in the opening statement at the
19 time proof is offered, it will be, of course, excluded
20 by this learned Court that has followed these proceedings
21 with such notable care.

22 If there is a fault or if there be a fault,
23 Mr. President, of overstatement, experience teaches us
24 that if pointed towards the actual result of a contest

1 of urging facts, it will not at all operate to the
2 benefit of the man -- or of the advocate -- who does
3 so overstate in his opening statement.

4 Finally, Mr. President, Chief of Counsel
5 humbly and with great respect suggests that when the
6 highest authority of a great nation sends an advocate
7 in a proceeding of this nature, if there is any ques-
8 tion the doubt should be resolved in favor of the
9 dignity and the propriety of permitting the case to
10 be presented as he suggests unless it militates
11 against justice in the courtroom.

12 Also, Mr. President, and as a final word,
13 it is a nice question when the grave duties and re-
14 sponsibilities of the prosecution cease, at what line
15 and where those of the honorable Court that meet it
16 begin. The defense counsel may successfully move to
17 strike out or the learned Tribunal may strike out,
18 but it is hardly within the realm of practicability
19 for defense counsel or even the Court to substitute
20 what should be said by counsel, the exact language
21 and the manner, in place of that so stricken out or
22 ordered to be modified.

23 THE PRESIDENT: The opening statement of
24 the Soviet's prosecutor at Nuernberg, General Rudenko,
25 has many of the features which the defense counsel,

Mr. Cunningham, finds objectionable in the proposed
1 opening statement of Minister Golunsky. I have Gen-
2 eral Rudenko's opening statement before me now; however,
3 there is a material difference between the Nuernberg
4 Charter and our own.

5 Article 24-c of the Nuernberg Charter pro-
6 vides: "The prosecution shall make an opening state-
7 ment." Article 15 of the Tokyo Charter provides: "The
8 prosecution may make a concise opening statement."

9 An opening statement, as the members of the
10 British Commonwealth or for the British Commonwealth
11 understand it, is an opening statement of the evidence
12 that will be given with some indication of its drift.
13 Here, of course, the evidence will extend to matters
14 which must be judicially noticed and an opening state-
15 ment may anticipate what matters will be judicially
16 noticed and deal with them. I say that, of course,
17 subject to any contrary view that the Tribunal may
18 hold when they consider this matter; and, of course,
19 the evidence open may extend to evidence of similar
20 conduct in order to prove system, and may therefore
21 include matters or events that occurred before the
22 period covered by the Indictment. Whether there will
23 be an attempt to prove system here in that way I cannot
24 say.

1 The Court will retire to consider Mr.
2 Cunningham's objection.

3 (Whereupon, at 1440, a recess
4 was taken until 1519, after which the pro-
5 ceedings were resumed as follows:)

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1 MARSHAL OF THE COURT: The Tribunal is now
2 resumed.

3 THE PRESIDENT: The Tribunal thinks that
4 the defense are not at liberty to object to the whole
5 of the proposed opening statement because some of it,
6 of course, is unobjectionable; but they are at liberty
7 to object to the parts to which they take exception,
8 and they must, of course, state their reasons for
9 objecting. Now we recall that in the case of the
10 opening of the Chief Prosecutor a certain course was
11 followed. We recall that when he was opening, the
12 defense took certain objections on grounds somewhat
13 similar to those stressed by Mr. Cunningham. Eventually
14 the defense agreed that the objections should be
15 dealt with after he had concluded his address. The
16 defense at that time took into account, no doubt,
17 the fact that we are not a jury, but judges; and that
18 we can be trusted to hear things that might preju-
19 dice a jury but which would not influence us.
20

21 We should like to know whether the defense
22 are prepared to take the same stand on this occasion.
23 If not, it would appear that we must deal with the
24 objections as they arise from time to time in the
25 course of the opening. We take it, of course, that
the defense have read the proposed opening, and that

1 they will be in a position from time to time as
2 Mr. Golunsky approaches the objectionable passage
3 to rise and object to it. We do, however, urge the
4 defense to consider the Court's convenience and the
5 need to avoid waste of time. We, of course, will
6 observe the Charter.

7 MR. CUNNINGHAM: If the Tribunal please,
8 my objections in the first instance were general,
9 and I thought, perhaps, I could obviate those specific
10 objections by the general objection.

11 THE PRESIDENT: To deal with that we should
12 have to read the whole of the opening statement and
13 do so in court. What would be saved? We cannot
14 conduct part of our proceedings out of court.

15 MR. CUNNINGHAM: Is it the position of the
16 Tribunal that we should interrupt, or wait until the
17 end of the statement, to make the objection?

18 THE PRESIDENT: If I recollect rightly, you
19 did that when the Chief Prosecutor opened.

20 MR. CUNNINGHAM: That is correct, but I be-
21 lieve some of the defense counsel would prefer in this
22 instance to interrupt and call attention to the mat-
23 ters as the opening address proceeds.

24 THE PRESIDENT: The majority of the Court
25 may think you have the right to do so; but will you

1 exercise the right?

2 MR. CUNNINGHAM: If the Tribunal please,
3 I believe some of the defense counsel would like to
4 exercise that right.

5 THE PRESIDENT: We hope there will be only
6 one counsel dealing with each objection.

7 MR. CUNNINGHAM: Well, the statement deals
8 with so many different defendants that it would be
9 difficult for one counsel to consider the applica-
10 bility of the statement to all the counsel when he
11 is particularly interested in following it only as
12 to one.

13 THE PRESIDENT: Of course, the part objected
14 to will have to be read, will appear in the record.
15 That means the whole of the opening will be read,
16 and what will be gained?

17 MR. CUNNINGHAM: I cannot answer that.

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1 THE PRESIDENT: Mr. Logan.

A 2 MR. LOGAN: If the Tribunal please, in answer
b 3 to your question, you suggested that we could make ob-
r 4 jections before the statement was read, and if that is
a 5 so, of course, then it wouldn't appear in the record,
& 6 but your Honors have heretofore decided, and this
M 7 point has been troubling defense counsel, that no part
o 8 of anything is going to be stricken from the record,
r 9 and for that reason we have been very hesitant about
s 10 reserving our objections until the entire document
e 11 has been read.

12 THE PRESIDENT: Put it this way, Mr. Logan:
13 if the objection will be taken before that part is
14 read, we have to read it to see whether it is ob-
15 jective. You will have to tell us why it is ob-
16 jective and you will have to read it for that
17 purpose. If you don't read it you will have to give
18 grounds, which will probably reveal its contents, and
19 the whole purpose of the objection will be to prevent
20 us, the Tribunal, from being prejudiced by reading
21 something we shouldn't see. I am shutting out of
22 consideration for the time being the fact that one
23 purpose of this trial, or one objective, is to let
24 the world know what is being done or what has been

1 I think, reveal the particular paragraphs objected
2 to. Of course, I am stressing these features in order
3 that you may meet and decide whether you should not
4 follow the course that you followed when the Chief
5 Prosecutor opened. You could meet and come to a rapid
6 decision, and if you decide to insist upon your ob-
7 jections being taken piecemeal we shall have to take
8 them piecemeal.

9 MR. LOGAN: If the Tribunal would reconsider
10 its ruling that matter in the opening address may be
11 stricken after it is entirely given, then we would be
12 in a better position to consider it, but at present I
13 know there is a divergence of views among the defense
14 counsel, and it may be if we did meet we could arrive
15 at some decision on it. But unless such a decision
16 is made by the Tribunal, in order to protect the ac-
17 cused, we feel that this speech should not be spread
18 on the record, at least some of us do, the way it is
19 written, and we would require a little time in order
20 to make up our minds about it, your Honor.

21 (Whereupon, there was discussion at
22 the defense counsel table.)

23 MR. LOGAN: If the Tribunal please, it seems
24 to be the concensus of a majority of defense counsel
25 that if you will reconsider your ruling and permit us

1 to make a motion upon the completion of this address
2 to strike out certain parts, and that you will either
3 grant or deny that motion, but if granted it means
4 that it still remains in the record, but if stricken
5 you will not consider that part which you have stricken
6 or agreed to have stricken out. The Chief Prosecutor
7 has no objection to that procedure.

8 MR. KEENAN: Mr. President, if I might be per-
9 mitted to add just one word. The prosecution has no
10 objection to a proceeding that after the statement has
11 been made a motion be made and acted upon to strike
12 out any portion of it. It will be in the record, of
13 course -- spread out -- but the Court will be merely
14 saying that it is not impressed and will not take
15 that matter into consideration, which the prosecution
16 wants to know just as much as the defense does. It is
17 enlightening to both counsel.

18 THE PRESIDENT: I think I can say now that
19 no Member of the Tribunal will take it into account
20 except so far as it is a fair forecast of the evidence
21 that will be given, and a fair statement of the
22 effect that might be attributed to that evidence in
23 the opinion of the prosecutor.

24 MR. LOGAN: May I say something that might
25 clear up a possible misunderstanding, your Honor?

When we speak of striking from the record any part
1 of the testimony, if such a motion is granted, in
2 our courts it means that the statements still appear
3 in the record but they are stricken and disregarded.
4 It is only when we ask to have matter expunged that
5 it is physically taken from the record. So that in
6 effect when we ask that it be stricken from the re-
7 cord we mean that the Court disregard it, and I think
8 that is what they mean here by that statement, not
9 that it be expunged.
10

MR. CUNNINGHAM: If the Tribunal please, the
11 purpose of the objection was to ask the Tribunal to
12 instruct the prosecution to submit to the Tribunal
13 and to the defense a brief, concise statement of what
14 they expected to prove and that the record show that,
15 and it was my thought that sixty-five pages was not
16 necessary to do that, in accordance with compliance
17 with the Charter, and the admonition given to Colonel
18 Morrow when he presented his opening statement, which
19 was much shorter and covered far more material in the
20 case perhaps than the Russian phase will.

THE PRESIDENT: The position being as Mr.
22 Logan states it, why not deal with the objections
23 after Mr. Golunsky has read his opening. That, I
24 think, meets the position as suggested by both the
25

1 learned Chief Prosecutor and Mr. Logan. There being
2 no objection, we will follow that course.

3 Well, it is ten to four now. It is hardly
4 worth while opening this afternoon. We will recess
5 now until half past nine tomorrow morning.

6 (Whereupon, at 1550, an adjournment was
7 taken until Tuesday, 8 October 1946, at 0930.)
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